FILE COPY

# Vol. IV

## TRANSCRIPT OF RECORD

(Pages 2403 to 2884)

---

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

---

No. 55

UNITED STATES, APPELLANT,

vs.

E. I. DU PONT DE NEMOURS AND COMPANY, ET AL.

---

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED MARCH 11, 1960

PROBABLE JURISDICTION NOTED MAY 23, 1960

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

---

No. 55

UNITED STATES, APPELLANT,

vs.

E. I. DU PONT DE NEMOURS AND COMPANY, ET AL.

---

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

---

## VOL. IV

---

### INDEX


| | Original | Print |
|---|---|---|
| Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued | | |
| Transcript of proceedings of April 6, 1959—Continued | | |
| Testimony of Irwin Friend— | | |
| Direct (by Mr. Reycraft) | 2740 | 2404 |
| Colloquy between Court and counsel | 2765 | 2424 |
| Transcript of proceedings of April 7, 1959 | 2770 | 2426 |
| Testimony of Thomas H. Beacon— | | |
| Direct (recalled) (by Mr. Owens) | 2770 | 2426 |
| Colloquy between Court and counsel | 2775 | 2430 |
| Testimony of John McCullough— | | |
| Direct (by Mr. Owens) | 2779 | 2433 |
| Colloquy between Court and counsel | 2781 | 2435 |
| Testimony of David M. Kennedy— | | |
| Direct (recalled) (by Mr. Owens) | 2794 | 2444 |

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued
Transcript of proceedings of April 7, 1959—Continued

| | Original | Print |
|---|---|---|
| Testimony of John McCullough | | |
| Direct (recalled) (by Mr. Owens) | 2797 | 2447 |
| Cross (by Mr. Gribbon) | 2821 | 2464 |
| Cross (by Mr. Dallstream) | 2840 | 2488 |
| Testimony of Paul L. Howell— | | |
| Direct (by Mr. Reycraft) | 2852 | 2491 |
| Cross (by Mr. Cox) | 2885 | 2517 |
| Transcript of proceedings of April 8, 1959 | 2908 | 2534 |
| Testimony of Paul L. Howell— | | |
| Cross (continued) (by Mr. Cox) | 2908 | 2534 |
| Redirect (by Mr. Reycraft) | 2912 | 2537 |
| Recross (by Mr. Cox) | 2913 | 2538 |
| Testimony of George B. Rogers— | | |
| Direct (by Mr. Ludlow) | 2918 | 2542 |
| Cross (by Mr. Burnham) | 2921 | 2545 |
| Colloquy between Court and counsel | 2924 | 2547 |
| Offers in evidence | 2930 | 2552 |
| Testimony of Ralph C. Sheets— | | |
| Direct (by Mr. Owens) | 2933 | 2554 |
| Cross (by Mr. Cox) | 2945 | 2563 |
| Cross (by Mr. Tierney) | 2951 | 2569 |
| Redirect (by Mr. Owens) | 2952 | 2570 |
| Recross (by Mr. Dallstream) | 2953 | 2570 |
| Testimony of W. Edwards Deming— | | |
| Direct (by Mr. Andrews) | 2954 | 2572 |
| Cross (by Mr. Gribbon) | 2975 | 2589 |
| Redirect (by Mr. Andrews) | 2983 | 2595 |
| Testimony of Irwin Friend— | | |
| Cross (recalled) (by Mr. Cox) | 2987 | 2599 |
| Redirect (by Mr. Reycraft) | 3011 | 2619 |
| Testimony of Sidney G. Duffy— | | |
| Direct (by Mr. Owens) | 3012 | 2619 |
| Ruling withdrawing Mr. Carson's motion to vacate subpoenas | 3024 | 2629 |
| Offers in evidence | 3025 | 2629 |
| Transcript of proceedings of April 9, 1959 | 3030 | 2632 |
| Offers in evidence | 3030 | 2632 |
| Colloquy between Court and counsel | 3037 | 2637 |

| | Original | Print |
|---|---|---|
| Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued | | |
| Government Exhibits: | | |
| Exhibit No. 1—Letter dated January 6, 1959 from John J. Scanlon to V. R. Hansen and enclosure | 3040 | 2640 |
| Exhibit No. 3—Table entitled "Open-End Investment Companies" | 3045 | 2645 |
| Exhibit No. 34—Table showing dollar volume (annual basis) of commomn and preferred stock sales effected on registered securities exchanges in the United States during ten year period, 1948-1957 | 3046 | 2646 |
| Exhibit No. 35—Table showing asset growth of non-insured corporate pension funds | 3047 | 2647 |
| Exhibit No. 36—Table showing non-insured corporate pension funds | 3048 | 2648 |
| Exhibit No. 38—Table showing non-insured corporate pension funds purchases and sales of common stock, 1951-1957 | 3049 | 2649 |
| Exhibit No. 39—Table showing number of General Motors stockholders, by years 1948-1957 | 3050 | 2650 |
| Exhibit No. 40—Table showing du Pont Corporation's net income per share of common stock stated separately as to net income from du Pont sources and net income from General Motors sources and disposition of such income as between cash dividends and retained earnings | 3051 | 2651 |
| Exhibit No. 64—Document setting forth facts regarding rights offering of 4,380,683 shares of common stock of General Motors Corporation in 1955 | 3052 | 2652 |
| Exhibit No. 66—Interoffice memorandum of Morgan Stanley & Co. dated December 10, 1954 and entitled "Underwriting Spreads on Certain Large Common Stock Offerings". | 3062 | 2661 |
| Exhibit No. 67—Interoffice memorandum of Morgan Stanley & Co. dated December 10, 1954 and entitled "General Motors Corporation" | 3066 | 2664 |
| Exhibit No. 70—Cover and table 4 from a study entitled "A Comprehensive Study of College and University Endowment Funds at June 30, 1957" | 3086 | 2682 |
| Exhibit No. 71—Cover and table 4 from a study entitled "A Comprehensive Study of College and University Endowment Funds at June 30, 1958" | 3088 | 2683 |

| | Original | Print |
|---|---|---|
| Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued | | |
| Government Exhibits—Continued | | |
| Exhibit No. 81—Document showing breakdown of requests for group offerings of Ford Motor Company common stock from institutional accounts | 3090 | 2684 |
| Exhibit No. 89—Table showing annual price range of General Motors common stock, 1948-1958 stated in terms of equivalents of present $1 2/3 par value common stock | 3091 | 2685 |
| Exhibit No. 90—Table showing net operating income, other income, net income (after taxes), cash dividends and retained earnings, by years, 1948-1957 for E. I. du Pont de Nemours & Company | 3092 | 2686 |
| Exhibit No. 91—Table showing dividends received by du Pont from General Motors, 1948-1958 | 3093 | 2687 |
| Exhibit No. 92—Documents setting forth facts relating to the secondary offering of 1,278,833 shares of General Motors common stock in 1956 | 3094 | 2688 |
| Exhibit No. 93—Document showing underwriting fees in connection with secondary offering of 1,278,833 shares of common stock of General Motors | 3097 | 2690 |
| Exhibit No. 94—Letter dated November 8, 1950 to National Bank of Detroit from Albert Bradley | 3105 | 2697 |
| Exhibit No. 98—Document showing price range of listed General Motors common stock for period April-May 1956 | 3109 | 2700 |
| Exhibit No. 112—Table showing number of offerings managed or co-managed by Morgan Stanley & Co. for the time period January 1, 1950-December 31, 1958 | 3110 | 2701 |
| Exhibit No. 146—Document showing General Motors fifty largest stockholders of record | 3111 | 2702 |
| Exhibit No. 147—Extract from report to the Bonus and Salary Committee from Alfred P. Sloan, Jr., "Employees' Saving—Stock Purchase Program", July 12, 1955 | 3115 | 2705 |
| Exhibit No. 148—Extract from report to one special committee to review Bonus Plan from Albert Bradley, January 3, 1957 and attached exhibit | 3116 | 2705 |
| Exhibit No. 149—Table classifying General Motors stockholders by size of holdings | 3118 | 2707 |
| Exhibit No. 151—List of du Pont common stockholders holding 5000 shares or more as of December 31, 1956 | 3119 | 2708 |

| | Original | Print |
|---|---|---|
| Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued | | |
| Government Exhibits—Continued | | |
| Exhibit No. 153—Document showing stock ownership in Christiana Securities Company excluding attached Exhibits I-VI | 3131 | 2720 |
| Exhibit No. 170—Table showing funds expended for purchase of bonus stock, 1947-1954 | 3132 | 2721 |
| Exhibit No. 171—Text of General Motors Bonus Plan | 3133 | 2721 |
| Exhibit No. 172—Table showing number of shares of General Motors common stock purchased by General Motors for its Bonus Plan during each years 1948-1957 and from January 1 through October 27, 1958 and number of newly issued shares of General Motors common stock sold by General Motors to trustee of General Motors Savings and Stock Purchase Program during the time period October, 1955 through October, 1958 | 3141 | 2731 |
| Exhibit No. 173—General Motors Corporation notice and proxy statement, pp. 15-24 | 3142 | 2732 |
| Exhibit No. 176—Table showing number of shares of General Motors common stock awarded to General Motors personnel under General Motors Bonus Plan during each of the years 1948 through 1957 | 3153 | 2751 |
| Exhibit No. 179—Defendant du Pont's answer to interrogatories dated December 23, 1958 | 3154 | 2752 |
| Exhibit No. 182—List of chemical materials made subject to request for admissions of fact directed to du Pont | 3158 | 2755 |
| Exhibit No. 236—Copy of speech by William C. Wall entitled "The Influence of Plastics on the Automotive Industry" | 3162 | 2758 |
| Exhibit No. 255—Document setting forth facts relating to secondary offering of 40,089 shares of General Motors common stock in 1958 | 3175 | 2773 |
| Exhibit No. 268—Document setting forth facts relating to sale of 33,671 shares of common stock of Aluminum Limited in 1950 | 3176 | 2774 |
| Exhibit No. 269—Document setting forth facts relating to secondary offering of 333,000 shares of common stock of Aluminum Limited in 1951 | 3177 | 2775 |
| Exhibit No. 270—Document showing facts relating to rights offering of 372,205 shares of capital stock of Aluminum Limited in 1951 | 3180 | 2777 |

| | Original | Print |
|---|---|---|
| Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued | | |
| Government Exhibits—Continued | | |
| Exhibit No. 275—Document showing facts relating to rights offering of 818,657 shares of capital stock of Aluminum Limited in 1953 | 3182 | 2779 |
| Exhibit No. 276—Document showing facts relating to secondary offering of 40,000 shares of capital stock of Aluminum Limited in 1954 | 3185 | 2782 |
| Exhibit No. 277—Document showing facts relating to rights offering of 904,314 shares of capital stock of Aluminum Limited in 1955 | 3186 | 2783 |
| Exhibit No. 280—Document showing facts relating to negotiated secondary offering of 178,100 shares of capital stock of Aluminum Limited Limited in 1955 | 3189 | 2785 |
| Exhibit No. 282—Document showing facts relating to offering of 158,280 shares of capital stock of Aluminum Limited in 1956 | 3191 | 2786 |
| Exhibit No. 283—Document showing facts relating to negotiated sale of 109,000 shares of capital stock of Aluminum Limited in 1956 | 3192 | 2786 |
| Exhibit No. 284—Document showing facts relating to negotiated secondary of 46,900 shares of capital stock of Aluminum Limited in 1956 | 3193 | 2787 |
| Exhibit No. 285—Document showing facts relating to negotiated non-registered secondary of 204,490 shares of capital stock of Aluminum Limited in 1957 | 3194 | 2788 |
| Exhibit No. 286—Document showing facts relating to negotiated non-registered secondary of 300,000 shares of capital stock of Aluminum Limited in 1958 | 3195 | 2789 |
| Exhibit No. 288—Document showing facts relating to negotiated non-registered secondary of 235,156 shares of capital stock of Aluminum Limited in 1958 | 3196 | 2790 |
| Exhibit No. 293—Table showing offerings of common stock of industrial corporations in amounts over $25 million during the seven-year period 1951-1957 and percentage changes in market price of stock and Standard & Poor's Stock Price Index both prior and subsequent to offerings; with reference to new issues, the per cent increase in stock outstanding; with reference to secondary distributions, the per cent of stock outstanding | 3198 | 2792 |

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

| | Original | Print |
|---|---|---|
| Government Exhibits—Continued | | |
| Exhibit No. 316—Table of domestic passenger cars produced, total United States and Chrysler Corporation, quarterly, 1952-1954 | 3199 | 2793 |
| Exhibit No. 318—Table showing General Motors common stock closing prices for period January 1946-May 1958 | 3200 | 2795 |
| Exhibit No. 322—Graph showing comparison of yields on General Motors common stock with Standard & Poor's composite common stock yields, quarterly, 1946-1958 | 3201 | 2796 |
| Exhibit No. 323—Table showing yields on General Motors common stock quarterly, first quarter 1946—first quarter 1958 | 3202 | 2797 |
| Exhibit No. 323(A)—Table showing dividend payments per share, General Motors and du Pont common stock, quarterly, 1945-1958 | 3204 | 2799 |
| Exhibit No. 324—Table showing spread between yields for General Motors common stock and Standard & Poor's composite stocks, quarterly, 1946-1958 | 3205 | 2800 |
| Exhibit No. 325—Graph of comparison of price-earnings ratios of General Motors common stock with Standard & Poor's stock price-earnings ratios, quarterly, 1946-1958 | 3206 | 2801 |
| Exhibit No. 330—Table showing du Pont common stock closing prices, January 1946-May 1958 | 3207 | 2802 |
| Exhibit No. 332—Graph of comparison of yields on du Pont common stock with Standard & Poor's composite common stock yields, quarterly, 1946-1958 | 3208 | 2803 |
| Exhibit No. 333—Table showing yield on du Pont common stock, quarterly, 1946-1958 | 3209 | 2805 |
| Exhibit No. 334—Table showing spread between yields for du Pont common stock and Standard & Poor's composite stocks, quarterly, 1946-1958 | 3211 | 2806 |
| Exhibit No. 335—Graph of comparison of price-earnings ratios of du Pont Common stock with Standard & Poor's composite common stock price-earnings ratios, quarterly, 1946-1958 | 3212 | 2806 |
| Exhibit No. 338—Table showing proportion of du Pont earnings comprised of General Motors dividends, annually, 1946-1957 | 3213 | 2807 |
| Exhibit No. 340—Table showing turnover of New York Stock Exchange shares, annually, 1946-1957 | 3214 | 2807 |

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

| | Original | Print |
|---|---|---|
| Government Exhibits—Continued | | |
| Exhibit No. 342—Table showing total shares traded and market value of all transactions of the New York Stock Exchange, January 1946-May 1958 | 3215 | 2808 |
| Exhibit No. 359—Table showing volume of General Motors common stock traded on the New York Stock Exchange, monthly, January 1946-May 1958 | 3216 | 2808 |
| Exhibit No. 362—Table showing General Motors shareholders, annually, 1946-1957 | 3217 | 2809 |
| Exhibit No. 363—Table comparing annual General Motors turnover with New York Stock Exchange turnover, annually, 1946-1957 | 3218 | 2809 |
| Exhibit No. 364—Table showing number of shares of General Motors common stock listed on the New York Stock Exchange, monthly, January 1946-May 1958 | 3219 | 2810 |
| Exhibit No. 366—Table showing institutional purchases and sales of General Motors shares, January 1953-October 1955 | 3220 | 2810 |
| Exhibit No. 367—Table showing institutional purchases and sales of General Motors shares (in dollars), January 1953-October 1955 | 3221 | 2811 |
| Exhibit No. 368—Table showing General Motors shares distributed to employees, annually, 1946-1957 | 3222 | 2811 |
| Exhibit No. 369—Table showing number and market value of General Motors shares held as Treasury Stock, annually, 1946-1957 | 3223 | 2812 |
| Exhibit No. 371—Graph showing volume of General Motors common stock traded, and total volume of shares traded on the New York stock Exchange, monthly, January 1946-May 1958 | 3224 | 2812 |
| Exhibit No. 373—Table showing volume of General Motors and du Pont common stock traded, as a per cent of total shares traded on the New York Stock Exchange, monthly, January 1946-May 1958 | 3225 | 2812 |
| Exhibit No. 374—Table showing monthly General Motors adjusted volume, yearly high and low; and monthly General Motors volume as per cent of total shares traded on New York Stock Exchange, yearly high and low, 1946-1957 | 3226 | 2813 |
| Exhibit No. 375—Graph comparing closing prices of General Motors common stock with volume of General Motors common stock traded, monthly, January 1946-May 1958 | 3227 | 2815 |

| | Original | Print |
|---|---|---|
| Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued | | |
| Government Exhibits—Continued | | |
| Exhibit No. 379—Graph showing volume of General Motors common stock traded; deflated by total shares traded on the New York Stock Exchange; and yields on General Motors common stock, quarterly, 1946-1958 | 3228 | 2816 |
| Exhibit No. 380—Table showing volume of General Motors common stock traded, as a per cent of total shares traded on the New York Stock Exchange, quarterly, 1946-1958 | 3229 | 2817 |
| Exhibit No. 383—Graph showing volume of General Motors common stock traded; deflated by total shares traded on the New York Stock Exchange; and price-earnings ratios of General Motors common stock, quarterly, 1946-1958 | 3230 | 2818 |
| Exhibit No. 387—Table showing volume of du Pont common stock traded on the New York Stock Exchange, annually, 1946-1957 | 3231 | 2819 |
| Exhibit No. 394—Graph showing adjusted and deflated closing prices of du Pont common stock compared with adjusted and deflated volume of du Pont common stock traded, monthly, January 1946-May 1958 | 3232 | 2820 |
| Exhibit No. 397—Table showing volume of du Pont common stock traded, as a per cent of total shares traded on the New York Stock Exchange, quarterly, 1946-1958 | 3233 | 2821 |
| Exhibit No. 400—Graph showing volume of du Pont common stock traded; deflated by total shares on the New York Stock Exchange; and price-earnings ratios of du Pont common stock, quarterly, 1946-1958 | 3234 | 2822 |
| Exhibit No. 403—Table showing the market value of public offerings of new corporate equity issues as per cent of market value of total shares traded on New York Stock Exchange, annually, 1946-1957 | 3235 | 2823 |
| Exhibit No. 405—Tables showing the market value of General Motors shares listed as per cent of market value of all shares listed on New York Stock Exchange, annually, 1946-1957 | 3236 | 2823 |
| Exhibit No. 406—Table showing the market value of General Motors and du Pont common stock listed on the New York Stock Exchange, monthly, January 1946-May 1958 | 3237 | 2824 |

| | Original | Print |
|---|---|---|
| Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued | | |
| Government Exhibits—Continued | | |
| Exhibit No. 406(A)—Table designating number of shares of du Pont common stock listed on the New York Stock Exchange as of the end of the month January 1946-May 1958 | 3238 | 2825 |
| Exhibit No. 407—Graph comparing the market value of General Motors common stock traded with market value of total shares traded on the New York Stock Exchange, monthly, January 1946-May 1958 | 3239 | 2827 |
| Exhibit No. 408—Table showing the market value of General Motors and du Pont common stock traded on the New York Stock Exchange, monthly, January 1946-May 1958 | 3240 | 2828 |
| Exhibit No. 408 (A)—Table showing high, low and average of high and low prices of General Motors common stock traded on the New York Stock Exchange, monthly, January 1946-May 1958 | 3241 | 2829 |
| Exhibit No. 408 (B)—Table showing high, low and average of high and low prices of du Pont common stock traded on the New York Stock Exchange, monthly, January 1946-May 1958 | 3242 | 2830 |
| Exhibit No. 409—Table showing market value of General Motors and du Pont common stock traded as a per cent of market value of total shares traded on the New York Stock Exchange, monthly, January 1946-May 1958 | 3243 | 2831 |
| Exhibit No. 432—Interrogatories served by plaintiff on defendant, General Motors Corporation, on or about November 28, 1958 | 3244 | 2833 |
| Exhibit No. 433—Defendant's (General Motors) answer to plaintiff's interrogatories served on or about November 28, 1958 | 3246 | 2834 |
| Exhibit No. 434—Defendant's (Christiana Securities Company) answer to interrogatories served by plaintiff on November 26, 1958 | 3252 | 2837 |
| Exhibit No. 435—Defendant's (Delaware Realty and Investment Company) answer to plaintiff's interrogatories served on November 26, 1958 | 3256 | 2840 |
| Exhibit No. 438—Document relating to shareholdings by stockholders of ALCOA who became subject to provisions of stock disposal judgment dated January 16, 1951 | 3258 | 2842 |

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

| | Original | Print |
|---|---|---|
| Government Exhibits—Continued | | |
| Exhibit No. 439—Table showing number of common shares of Aluminum Limited sold pursuant to stock disposal judgment of January 16, 1951 and number of new common shares offered through subscription rights by years, 1951-1958 | 3259 | 2844 |
| Exhibit No. 440—Table showing number of shares of Aluminum Limited stock disposed of by shareholders, 1951-1957 | 3260 | 2844 |
| Exhibit No. 441—Table showing number of shares of Aluminum Limited common stock exchanges by shareholders subject to judgment and round lot trading volume for Aluminum Limited stock on New York Stock Exchange | 3261 | 2844 |
| Exhibit No. 442—Table showing shares of Aluminum Limited stock outstanding and round lot trading volume stock on New York Stock Exchange, 1950-1958 | 3262 | 2845 |
| Exhibit No. 443—Table showing number of shares of Aluminum Limited stock sold by shareholders and approximate market value of such shares by months, 1951-1958 | 3263 | 2846 |
| Exhibit No. 444—Table showing round lot trading volume of common stock of Aluminum Limited by months, 1950-1958, on New York Stock Exchange | 3264 | 2847 |
| Exhibit No. 445—Table showing closing prices of stock of Aluminum Limited at end of month on New York Stock Exchange, 1950-1958 | 3265 | 2848 |
| Exhibit No. 446—Graph showing closing prices for Aluminum Limited common stock and common share trading volume on New York Stock Exchange, number of shares of common stock of Aluminum Limited sold by Alcoa stockholders subject to judgment, number of shares of new common stock offered by Aluminum Limited through subscription rights, by months for period 1950-1958 | 3266 | 2849 |
| Exhibit No. 447—Graph showing price of Aluminum Limited stock compared with Standard & Poor's Daily Stock Price Index, 1950-1958 | 3267 | 2850 |
| Exhibit No. 448—Table showing stock turnover data for large companies; 1953-1957 | 3268 | 2851 |
| Exhibit No. 449—Table showing stock turnover data for large companies; 1953 | 3269 | 2852 |
| Exhibit No. 450—Table showing stock turnover data for large companies; 1954 | 3270 | 2853 |

Record from the United States District Court for the Northern District of Illinois, Eastern Division—Continued

| | Original | Print |
|---|---|---|
| Government Exhibits—Continued | | |
| Exhibit No. 451—Table showing stock turnover data for large companies; 1955 | 3271 | 2854 |
| Exhibit No. 452—Table showing stock turnover data for large companies; 1956 | 3272 | 2855 |
| Exhibit No. 453—Table showing stock turnover data for large companies; 1957 | 3273 | 2856 |
| Exhibit No. 466—Table showing total stock outstanding, trading volume over securities exchanges and turnover ratios for several corporations for 1957 | 3274 | 2857 |
| Exhibit No. 519—Document listing securities issued with an aggregate value in excess of $50,000,000 and secondary offerings of securities having an aggregate value in excess of $25,000,000 by the firm of Merrill, Lynch, Pierce, Fenner & Smith | 3275 | 2859 |
| Exhibit No. 527—Informal memorandum from Treasurer of General Motors to General Motors Finance Committee members dated January 5, 1955 relating to rights offering of General Motors stock | 3297 | 2875 |
| Exhibit No. 528—Supplemental memorandum to memorandum marked as Government's Exhibit No. 527 | 3302 | 2880 |

[fol. 2739] (Whereupon said document was marked Defendant Christiana Exhibit No. 19, for identification.)

Mr. Scott: This letter also sets forth the holdings of the University of Chicago in these three stocks as of June 30, 1958.

I offer in evidence Christiana Exhibit No. 19.

Mr. Reycraft: No objection.

The Court: It is received.

(Said document, so offered and received in evidence, was marked Defendant Christiana Exhibit 19.)

Mr. Scott: Finally, I ask the reporter to mark as Christiana Exhibit No. 20, a letter dated March 18, 1959, addressed to Mr. Scott from the same Mr. Parker Hall, which lists a group of colleges and the total number of shares held in the aggregate by that group of institutions, of Christiana Securities stock.

(Whereupon said document was marked Defendant Christiana Exhibit No. 20, for identification.)

Mr. Scott: I offer in evidence Christiana Exhibit No. 20.

Mr. Reycraft: No objection.

The Court: It is received in evidence.

(Said document, so offered and received in evidence, was marked Defendant Christiana Exhibit 20.)

Mr. Scott: That is all. Thank you, your Honor.

Mr. Reycraft: Are you now resting, Mr. Scott?

[fol. 2740] Mr. Scott: Yes.

Mr. Reycraft: Do you have anything further to offer, Mr. Dallstream, on this subject? Are you resting with respect to these stock holding matters?

Mr. Dallstream: I will not offer them until we get our chance to check it.

Mr. Reycraft: But you are not resting?

Mr. Dallstream: No.

Mr. Reycraft: The Government calls Dr. Irwin Friend.

IRWIN FRIEND, called as a witness on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Direct examination.

By Mr. Reycraft:

Q. Dr. Friend, I have previously had marked for identification as Government Exhibit 294, a summary of your experience. I have also had marked for identification a list of your publications as Government Exhibit No. 617, copies of which have been furnished to counsel previously.

(Thereupon said document was marked Government Exhibit No. 617 for identification.)

Mr. Reycraft: I offer both of these documents in evidence.

(Said documents, so offered and received in evidence, were marked Government's Exhibits Nos. 294 and 617.)

The Court: What is your first name, Doctor?
The Witness: Irwin.

By Mr. Reycraft:

Q. Are you familiar with the recent secondary distribution of A&P stock?

A. Just in a general way.

[fol. 2741] Q. I take it your familiarity with that issue is derived from the prospectus and from an examination of the price movements of that stock before and after the issue?

A. Well, I have looked through the prospectus and through a work sheet which I asked to be prepared, showing the price movements in A&P, and I can testify on the basis of those two things.

Q. Will you tell me what your examination of this information indicates with respect to the price movement of A&P stock since the filing of the registration statement to the offering date?

A. The registration date was March 4, 1959. The offering date March 24, 1959.

From the registration date to the offering date there was a rather small decline in the price of A&P stock which was

probably percentagewise somewhat larger than the decline in the Dow-Jones average.

Q. And what do the data which you have examined show with respect to the price movement one month prior to filing up to the filing date?

A. For one month prior to the filing up to the offering date you find that whereas the Dow-Jones went up, oh, about four per cent, A&P declined at about the same amount.

Q. From that information do you infer that there has been any impact as a result of this secondary distribution?

A. Yes. There would seem to be a definite impact on the price of A&P which is somewhat greater than would be accounted for by the general market movement in this particular period.

Q. Taking the period one month prior to the filing of the registration statement, can you give a percentage figure, an approximate percentage figure?

A. Well, it depends so much on the date one picks that I would say that the net difference that I indicated just a moment ago, which would amount to something of the order [fol. 2742] of eight per cent, would probably not be changed too much if you go back another month.

Q. Does the data you have examined indicate the percentage of A&P stock which it has been authorized but is not yet on the market?

A. I do not have it here, but my recollection is that it was a little over eight per cent.

Q. Does the eight per cent figure refer to the percentage of the equity which was sold on this secondary?

A. Yes. The new offering represented eight per cent of the total outstanding stock.

Q. And does the data you have examined indicate the amount of stock which is now held by the family and by the Foundation?

A. That I have here. The amount currently held by the Foundation is about 34 per cent of the total outstanding. The amount held by the Hartford Family is currently a little over 38 per cent of the amount outstanding, leaving about 28 per cent in the hands of the public.

Q. Now, Doctor Friend, have you also considered the Upjohn offering in preparing for your testimony here?

A. Again, I familiarized myself with that in a general way.

Q. Are you familiar with any unusual circumstances with respect to the Upjohn offering.

A. Well, the Upjohn offering, in my opinion, is a rather different breed of cat from the other offerings in these exhibits generally in that the Upjohn offering was an offering, to my recollection—and I am reasonably sure this is right—of an over-the-counter stock rather than of a listed security, that is, rather than the security which is listed on any registered securities exchange.

[fol. 2743] Q. Now, referring to du Pont Exhibit No. 32, in your opinion should the Upjohn issue be included in determining the average market impact of those secondaries as a meaningful conclusion?

Mr. Cox: May I hear that question again?

Mr. Reycraft: Let me restate it.

Mr. Cox: I have no objection, I just did not catch it.

By Mr. Reycraft:

Q. In your opinion, Doctor Friend, is the data including or excluding Upjohn more meaningful?

A. I find that very difficult to answer. I think that you ought to take a look at every bit of evidence you have and that bit of evidence includes Upjohn; but I do not think that Upjohn is as appropriately averaged in with these other stocks, all of which were listed on a securities exchange and, as a matter of fact, I think all of which were listed on the New York Stock Exchange.

So that, whereas I would want to look at both averages, I probably place somewhat more emphasis on the average ex-Upjohn, but I would by no means discount it.

Mr. Cox: What exhibit was that?

Mr. Reycraft: 32.

By Mr. Reycraft:

Q. Doctor Friend, have you also examined the data relating to the recent Ford secondary distribution?

A. Again, I have examined this in a general way.

Q. You have examined the data which is available, I take it, inasmuch as this is a recent secondary?

A. Yes. I have a particular interest in this secondary, I think, for obvious reasons.

[fol. 2744] Q. Doctor Friend, would you state the pertinent facts with respect to this secondary, including size and circumstances of this offering?

A. Those data are not given here so I will have to rely on my memory. The new offering amounted to, as I recall, about four per cent of the total amount outstanding and roughly about 20 per cent of the amount outstanding in public hands.

Q. And how many shares were involved?

A. Well, it was an offering of a little over one hundred million dollars, two million shares.

Q. Have you made any examination of the price movement of Ford Motor Company stock in relation to that secondary distribution?

A. Again, I asked that the Government prepare such data.

Q. And what do these data indicate?

A. Well, these data indicate—perhaps I should qualify that—they do not indicate any significant effects of the new offering on the price of the Ford Motor Company stock.

Q. Now, Doctor Friend, taking the date on which the registration statement was filed with the SEC and the date on which the secondary was actually offered, what has been the price movement in relation to the industrial average?

A. Well, I see from this work paper that the price of Ford Motor Company common stock on March 12, 1959, which was the day of the registration statement, was a touch over $55. It is currently $59.

Let me give you the price also on the offering date. It was intermediate between the two. It was $57 on the offering date.

Now, as compared to this moderate sized rise in the price of Ford Company stock from the date of registration, the Dow-Jones closing industrial average, which happens to [fol. 2745] be the securities average I have here, went down modestly.

Q. Referring to the period one month prior to the registration date, what does your examination of these figures show with respect to the price movement of the Ford issue?

A. Well, going back then exactly to February 12, the price of Ford stock was $53.63 on February 12th, as against $55.38 on Marsh 12, which is a moderate rise of, I would say, a little over three per cent; whereas, the Dow-Jones

average in that same period went up from 582 to 614, which would be about, let's see, six per cent roughly, a little better than six per cent.

So in this case the Dow-Jones behaved somewhat better than did the Ford Motor Company stock.

Q. Are you able to discern from the price information that you have examined, any impact on the market price of Ford stock resulting from this secondary distribution?

A. I think I would conclude, as I indicated earlier, that there is no obvious evidence of any impact, though I am sure there was some.

Q. Will you explain your last statement, that you are sure there was some.

A. Well, I am firmly convinced of rationality and the rational behavior to have some decrease in price of a stock subject to a new offering as compared to the market generally, unless there are offsetting factors.

Q. Does it appear to you that the offsetting factors were more dominant in this market than this volume increase?

A. In this market apparently the offsetting factors were at least adequate to take care of any depressant effect of a new offering.

Q. Now, Doctor Friend, can you tell me what percentage [fol. 2746] of the total amount of Ford stock being traded on the New York Stock Exchange—let me change that—what the percentage of addition of this secondary was to the total amount of stock traded on the New York Stock Exchange, or what additional supply was added?

A. I do not know the answer to that. I do know, as I indicated earlier, that the relationship between the new offering and the total amount outstanding in the hands of the public is one to five or twenty per cent.

Q. 20 per cent?

A. Yes.

Q. From your examination of the prospectus which was issued in connection with this secondary distribution, is there any indication that the Ford Foundation may sell additional stock from time to time?

A. The prospectus is very clear about the fact that the Ford Foundation may do so.

Q. And does the prospectus indicate the amount of stock which is now in the hands of the Foundation?

A. It does.

Q. Can you give us that figure?

A. I must confess that I am not sure of this, but it does show that the Class A stock outstanding is 34 million shares, and this to my recollection is owned by the Ford Foundation.

This would compare with an outstanding in the hands of the public of 14 million shares.

Q. Doctor Friend, have you examined the testimony of Mr. Emerson, Mr. Lenz, Doctor Jacoby and Mr. Forgan?

A. I did.

Q. Have you examined any additional statistical information which you thought to be relevant in connection with their testimony?

A. I did.

Q. Will you state what additional information you [fol. 2747] thought to be relevant?

A. Well, as I indicated on an earlier occasion, all data which shows what happens to the price of outstanding issues when you have sizable new flotations, are in my opinion relevant.

The Government previously had prepared data indicating the relationship during various time intervals between the movements in stocks subject to such offerings and the stock market index generally, but confined, in view of time limitations, the particular exhibit just to industrial issues alone and, as you may recall, compared what happened to the particular stocks involved only to a general standard statistics industrial price index, rather than being able to use specific industries to deflate the movements in stock prices.

Q. Now, on your examination of the additional material which you thought to be relevant, will you consider the periods which are closest to those which Mr. Emerson testified were most relevant? Do you recall the period Mr. Emerson testified was most relevant in assessing the impact of a secondary or new offering?

A. I would have to look at his exhibit.

As I recall, basically, most of his stocks were in the post-war period with one exception, I think Gulf.

Q. I think I may have confused you. I meant the period prior to and after the offering dates.

A. Oh, I am sorry. Well, I think the periods that Mr. Emerson picked, which were four weeks before the offer-

ing to the offering price, and then four weeks before the offering to two week after the offering, are quite relevant periods.

I think it is preferable for the reasons I indicated earlier to take a wider time span.

Actually, apart from the Upjohn issue, the results that [fol. 2748] Mr. Emerson gets through this particular device do not differ very greatly from the results that were implied by the Government exhibit.

Q. You are referring to du Pont Exhibit 32?

A. Yes.

Q. Now, referring to the material which you have prepared, which had been prepared at your direction, will you state what the data indicate with respect to the issues which you have examined?

A. The first work paper indicates that for all common stocks of public utility corporations in amounts of $25 million and over during the seven-year period 1951 to 1957, which is the same period that the Government had previously covered for industrial stocks, the impact of new offerings on the average in the past seems to have been virtually negligible.

"Negligible" may be a misleading term, so let me give you two relevant statistics. If you take the 16 rights offerings involved, the movement in the stock price index, deflated by the Standard & Poor's utilities index over the fifteen months' period that we covered previously, was an upward movement of 1 per cent, which is clearly nonsense, the only point being that there is no indication of any movement.

If you confine your attention to the six public offerings, the relationship between the stock prices deflated by the Standard & Poor's utility index is rather similar to the one in the case of the rights offerings, but in this case you have a relative decline of 1.7 per cent which, of course, is a negligible number.

Now, I might point out that you do not change the picture significantly if you confine your attention to the period around the offering date.

[fol. 2749] Q. Dr. Friend, have you also examined the industrial issues in light of the special stock indices?

A. I have.

Q. Will you explain briefly for the record what the distinction is between the various types of indices used?

A. Well, in the original Government exhibit, what was done was to compare the movements in particular issues subject to new offerings, with the movements in the stock market industrial average generally.

In this new work that was done by the Government, for every offering the movement in the price of the stock involved was compared with the movement in the appropriate industry index. In other words, if a steel stock had been offered you would compare its price movement during a time it was subject to offering influences, with the price movements of a steel index, of a stock price steel index.

Q. And what did your examination of these issues show in light of the special index?

A. Well, speaking first broadly before I get down to a couple of details, there is not too much difference between the two approaches. If you take the fifteen-month period as a whole, you will find that this new approach shows somewhat more impact of the new offerings than the old approach.

On the other hand, if you confine your attention to the period around the offering, the new approach shows—I was going to say "definitely," but let me use the same terminology—somewhat less impact than the old.

Q. Dr. Friend, have you examined the two General Motors issues, that is, the Sloan secondary and the General Motors rights issue, in relation to the special stock index?

A. Well, in connection with the work sheets that I just discussed—of course I had a particular interest in what happened to the two GM offerings involved, so I did look [fol. 2750] at the relative movement in GM stock compared to an auto price index during the period in which the GM stock might be said to be subject to offering influences.

Now, I might say that in the case of GM this gets to be an at least questionable procedure because in large part what you are doing is part of this is comparing it with Chrysler and for part of this period with Chrysler and then later Ford.

Q. In your opinion, is the general industrial stock index

a more meaningful basis for comparison than the special index in the auto industry?

A. I would say so, yes.

Q. Because of the heavy weight which General Motors carries in that index?

A. Yes. I might also add, lest there be any misunderstanding, that actually if you use a specific auto stock index, the impact of the GM offering, if anything, is slightly less; but I do not think it is the appropriate comparison.

Q. Would you state again what your conclusions were with respect to the comparison of first, the Sloan issue, and then the rights issue, with respect to the general industrial stock index?

A. Well, I would rather do that on the basis of the original Government exhibit than on the basis of this.

Q. Those figures are indicated in the original Government exhibit, and you prefer to rely on that?

A. Yes.

Q. Considering both the recent secondary issues, the A&P issue, and the Ford secondary, what conclusion do you draw with respect to the existing demand for common stock?

A. Well, I think both of those issues indicated what we all knew before we looked at that data, namely, that the exist-
[fol. 2751] ing demand for common stock is quite high. This presumably is the reason why the stock market is going up.

Q. So that they indicate, among other things, approximately 3,800,000 shares of common stock were sold within a period of two or three weeks?

A. You mean combining the two?

Q. Yes.

A. Yes.

Q. Now, Dr. Friend, was there an active market for Ford stock prior to this particular secondary? Was it traded on the New York Stock Exchange heavily?

A. Oh, surely.

Q. Was it available to any investor who wanted to buy it through the New York Stock Exchange?

A. Yes.

Q. Would it be accurate to say that existing demand was being satisfied through the mechanism of the New York Stock Exchange?

A. I think so.

Q. Can you, sir, shed some light on the fact that an additional 20 per cent of Ford stock was sold overnight, in view of the fact that existing demand was being satisfied through the Exchange?

A. I gather the question intends to look into why people bought the new offering, rather than buying on the New York Stock Exchange. Is that the essence of the question?

Q. Assuming that anyone who wanted to buy Ford stock could buy it through the New York Stock Exchange, is there some consistent explanation of how two million shares could be sold overnight consistent with the basic law of supply and demand?

A. Well, there are two things that readily come to mind. The first clearly is the fact that some slight concession was undoubtedly made, as is typical in a new offering. I have forgotten what the concession was, but I am sure that it was quite small, so that it would make——

[fol. 2752] Mr. Bushby: I think I will object to that characterization "concession." He hasn't specified what it is.

The Witness: May I look it up at a later time? I am sure that this is true, but I don't know the exact figure. Do you have it there?

Mr. Reycraft: Yes, sir.

(Document handed to witness.)

By Mr. Reycraft:

Q. I believe the total spread is indicated on the first page of the prospectus.

A. This is a commission. I would like to see the exhibit showing the price movement, an exhibit which you had shown me a moment ago.

(Document handed to witness.)

By Mr. Reycraft:

Q. You are referring now to the fact that there was a small discount from the New York Stock Exchange price?

A. Yes. You asked me for rational reasons why people would buy the new offering, rather than buying on the New York Stock Exchange.

Q. Yes, sir.

A. The price of the new offering was $56.50. This was March 12, 1959. The close on March 12th was $55.38; the close on March 11th was $54.75, so that the concession would be the difference between—this makes no sense whatsoever.

I would like to have an opportunity to check the New York Stock Exchange price later on, in any intermission we might have, at the time that the offering was actually made.

[fol. 2753] Q. All right, sir.

There is a second factor which I should mention, and that is that clearly any time you have a new offering, you give a concession to the dealers, which is significantly larger than the typical brokerage commission, so that it is to their interest to drum up a lot of business, which would not normally exist on the New York Stock Exchange.

Q. So that the selling commission also induces the salesmen to go out and sell the stock and create a new demand. Is that your testimony?

A. That is right.

Q. Dr. Friend, directing your attention now to the divestiture of Aluminium stock and to the Anti-Trust decree, will you refer to Government's Exhibit 447, du Pont Exhibit 47, and your notes, and will you state whether you consider any other data to be relevant in determining whether that has made a price impact on Aluminium stock resulting from divestiture other than the data which are set forth in the Government's Exhibit and du Pont's Exhibit?

A. Let me summarize very briefly what these two exhibits seem to show.

One shows that if you deflate Aluminium Limited by the prices of common stock generally, that Aluminium did not fare badly; as a matter of fact, it fared somewhat better than the general stock market index over this period.

The second exhibit shows that if, on the other hand, you compare Aluminium with the prices of other aluminum stocks, that other aluminum stocks fared better than did Aluminium, pricewise.

Now, in that context, I would say that the most relevant thing that one should look at would be to see whether there were significant differences in the price earning ratios of [fol. 2754] the various aluminum stocks involved, to see

whether prices simply moved the way earnings did, or whether there were other considerations, including the effect of the new offering.

Now, on the basis of data which the Government prepared for me, covering the period 1947—and I might say, unfortunately, ending in 1957—it appears clear that Aluminium had a much better experience in the trend of price earnings ratios over this period than did Aluminum Company of America or Reynolds Metals, two of the three other stocks in question; but not as good an experience as did Kaiser Aluminum and Chemical.

Now, in that last case, I might point out that Kaiser Aluminum and Chemical was not even available in the first year covered in this comparison.

Q. What did those data show with respect to the comparative price earnings ratios in the last year indicated, 1957?

A. It shows that the price earnings ratio for Aluminium was 29.4; for Aluminum Company of America, 22.8; for Reynolds Metals, 14.9; and for Kaiser Aluminum and Chemical, 21.8, which means, of course, that Aluminium was selling at a much higher rate relative to earnings than the three other stocks involved.

Q. Dr. Friend, in order to have the record complete, I will attempt to obtain the figures for 1958, so that there won't be any question on it.

A. I wish you would do so.

Q. Are you aware, Dr. Friend, of any other influences other than volume, supply and demand relationships, which have exerted an influence on the market price of Aluminium over the period you have examined?

A. There are several influences, a couple of which I think were pointed out by witnesses called by du Pont. For one thing, you had a great water shortage—I have [fol. 2755] forgotten what years were involved—in Canada, so that the output of Aluminium was curtailed. But of course, in a sense, this already should be reflected in the earnings figures. I am not quite sure that this is saying anything more.

In addition, you did have the fact that there was a scare of Russian competition in the aluminum field, which would affect Aluminium much more than it would affect the other

producers, and one could argue that this is an additional factor which would not be reflected in earnings.

Q. Doctor Friend, referring now to the AT&T issue which Mr. Lenz discussed in his testimony at Page 3940 of the transcript, I will read the paragraph:

> "The fact that the offerings are at a big discount price brings in a big outside interest. I believe Mr. Scanlon of the telephone company mentioned the fact that in the rights offering of the telephone stock that half of the stock was taken up by outsiders other than the stockholders of the company itself."

Now, in order to keep the record accurate, I believe Mr. Lenz later changed his testimony to one-quarter of the stock.

Would you explain whether you think the taking up of the stock by outsiders has any significance in your study?

A. May I see that?

Q. Yes, sir.

A. Well, at face value this seems to be erroneous. It starts out with saying that the fact that the offerings are at a big discount price brings in a big outside interest.

I don't see why the discount price is relevant to outside purchases. As a matter of fact, I think this tends to [fol. 2756] simply substantiate a point I made earlier; namely, the fact that the appropriate comparison in trying to determine the effect of a rights offering on stock price is to compare what happens to the market price on the exchange with some comparable stock price index rather than to take a look at the discounted price to stockholders.

Another way of looking at the same thing is simply to take the discounted price to stockholders plus the value of rights to stockholders which generally is pretty close to the price of the stock on the exchange.

The very fact that outsiders bought the telephone company stock in large quantity is an indication of the fact that it is not discounted price that is relevant.

Q. Doctor Friend, in your examination of the exhibits which have been offered in this case, and in light of your general background, are you aware of any changes in the number of AT&T stockholders since the end of World War II?

A. I don't know the numbers, but I do recall a very big increase.

Q. Would you explain whether you think this has any significance in relation to finding new purchasers for AT&T stock?

A. I think this is one of many bits of evidence that can be given, leading to the unquestioned conclusion that there has been a major increase in the stockholder's list in the number of people interested in buying stock and buying stock.

Q. Which leads to the rather obvious conclusion that these are all new purchasers since these are all new stockholders?

A. It is not completely obvious from these data alone that none of them had owned any stock before, but we have external data, including data published by the New York Stock Exchange, showing there has been a tre- [fol. 2757] mendous increase in the number of stockholders in the post-war period.

Q. Doctor Friend, in examining Mr. Emerson's testimony, have you given any attention to his testimony that there was a decrease in institutional holdings of General Motors from the middle of 1955 to the middle of 1958?

A. I have. I must say I was somewhat puzzled by the fact.

Q. Did you upon consideration have any views as to what the causes might be?

A. I can adduce hypothetically what a couple of causes might have been. I don't know for a fact that these are the causes.

One obvious possible cause is the fact that in the middle of 1955, the automobile industry as a whole had the best automobile year they have ever had in their hishtory. In the middle of 1958 they had a horrible year. They were in the middle of a horrible year. So I wouldn't be too surprised to see some switch in portfolios on this account.

In addition, you had a complete new stock available to institutional portfolios in the intervening period, namely, Ford stock. To the extent institutions have in mind some notion of a balanced portfolio by industries, if they did buy heavily Ford stock, there might be some natural tendency to diminish their holdings of GM stock.

I am not saying these were the reasons. I am just saying

these reasons were, at least, not inconsistent with any data that was adduced or that I know about.

Q. I would like to refer again to a portion of the transcript.

[fol. 2758] Doctor Friend, you may recall that you commented on the conclusion which Mr. Emerson drew with respect to the assumption that all persons who acquired General Motors stock since 1952 on the basis of their tax cost would find it advantageous to sell General Motors stock?

Mr. Cox: I think, Mr. Reycraft, we should have the passage of the transcript.

Mr. Reycraft: It is page 2789 of the typed transcript.

By Mr. Reycraft:

Q. (Continuing) Doctor Friend, will you refer to page 2789 of the typed transcript and tell me if that is the section of the transcript to which you referred?

A. To which I referred?

Q. Yes, sir, to which I referred.

Mr. Cox: You are in a better position to know that than he is.

Mr. Bushby: I don't know what you refer to. Will you read it?

By the Witness:

A. No, this doesn't seem to be the relevant part.

By Mr. Reycraft:

Q. Do you recall any testimony by Mr. Emerson with respect to selling by stockholders of stock they acquired prior to 1952?

A. I do.

Q. Do you have any comment to make on the accounting methods used in that estimate?

Mr. Cox: I object to this. I think really we should have the passage of the transcript before us. Why don't we take time and find it?

[fol. 2759] The Court: Yes, I think it should be referred to.

Court stands recessed for ten minutes.

(Whereupon a short recess was taken, after which the following further proceedings were had:)

The Court: Proceed, please.

By Mr. Reycraft:

Q. Doctor Friend, referring to page 2784 of the typewritten transcript, the question was asked of Mr. Emerson, and I will read the question:

"Q. Mr. Emerson, did you attempt to make any estimate as to how much of the stock of du Pont might be held by persons who would find it to their financial advantage to sell du Pont rather than to accept the distribution of General Motors shares?"

If I may skip to the next page, if there is no objection, I think this is not misleading——

Mr. Cox: Why don't you read the immediate answer, and then go to the next page?

Mr. Reycraft: All right.

By Mr. Reycraft:

Q. (Continuing) "A. We don't know, of course, what the cost bases of the du Pont stock holders would be; but we were able to work out a minimum figure or what we consider a minimum of the stock that might have to come into the market."

Then, at the next page, Mr. Emerson's answer:

"A. Well, then, we looked back over the market record to see how long it was since du Pont had sold at 86.27, and all the shares sold on the New York Stock Exchange since 1952 have been above that price."

[fol. 2760] Doctor Friend, in examining that testimony of Mr. Emerson, do you have any observation to make with respect to the validity of those figures?

A. I wouldn't know whether the figure he arrives at is in fact too high, too low, or just about right, for the purposes he uses it, but I certainly do see two significant deficiencies which are not allowed for.

These two happen to operate in the direction of reducing the total number of shares traded since 1952, which he thinks might be put onto the market.

These two reasons are the following: First of all, you do have many people buying and selling the same shares in a period as long as this.

Speaking as one individual stockholder, I know I have done this on numerous occasions, and I suspect many others have, so that you do get into a certain amount of double accounting.

Second of all, a rather significant proportion of trading on the stock change—I have forgotten the exact percentage, but it would be the rough magnitude of 15 per cent, anyhow—would be member trading. Clearly these figures, in other words, member trading should not be included in the total he uses.

Q. Dr. Friend, returning now to your earlier testimony with respect to the amount of discount from the market price at which the recent Ford secondary was offered, do you wish to make any correction in your testimony?

A. I not only wish to, I am delighted to. This, of course, is a triumph for rationality.

The correct figures indicate that whereas the Ford Motor Company stock was offered at $56.50 on March 31, 1959, the price on the Exchange was $57⅛.

Q. So that there was a slight discount from the closing price on the New York Stock Exchange?

A. Yes.

[fol. 2761] Dr. Friend, referring to Page 3200 of the transcript, to an answer given by Dr. Jacoby, I will read his answer and also the question:

> "Q. No, so far, I think, Dean Jacoby, we have been discussing the market impact on the price of the common stock of du Pont Company in terms of the first of the possible alternative dividend policies that you have described.
>
> "Before I leave that, would you tell us what, in your opinion, based on the considerations that you have described in your answers to my previous questions, the amount of that impact would be stated in terms of its depressant effect on the value of the du Pont common stock?

"A. Well, under Dividend Policy 1, namely, the policy of distributing historical cash dividends plus General Motors stock over the ten years, I would conclude that the pressure of depression in the market value of du Pont stock would mount through time from at least ten per cent because of the tax penalty factor, up to forty per cent, when we add the loss of earning power suffered by du Pont as a result of divesting itself of an earning asset accounting for thirty per cent of its total earnings."

Now, Dr. Friend, do you have any comment on the use of the 40 per cent figure on this context?

A. May I see the transcript?

Q. Yes, sir.

(Document handed to witness.)

A. I think it is inappropriate to talk about the depression in the market value of du Pont, which adds together two completely different things. One is the tax penalty factor, which here is adduced to be ten per cent; and I have no [fol. 2762] notion whether this is just right, too high, or too low; and the second being a supposed loss of earning power suffered by du Pont as a result of divesting itself of an earning asset accounting for 30 per cent of its total earnings.

Clearly, the fact that the stockholder in du Pont has an asset, namely GM, should be used to offset this.

Now it is true that if you do have an additional tax penalty, the offset will not be the complete amount of the amount of GM received, but I don't see in what sense you can talk about a depression in the market price of du Pont amounting to 40 per cent.

Q. This 30 per cent represents, does it not, the separation of the stock certificate into separate certificates?

A. Yes, it does.

Mr. Cox: That is the point, Mr. Reycraft, made by Dean Jacoby.

Mr. Reycraft: I believe that is part of my reference.

The Witness: I am sorry, I didn't hear that.

Mr. Cox: I don't think you have to mind us, Doctor Friend. I was just saying that Dean Jacoby recognized at

the foot of the page that the stockholder got the earning asset as a result of the distribution.

By Mr. Reycraft:

Q. Doctor Friend, will you refer to Page 3208 of the typewritten transcript, where Dean Jacoby refers to the cost of raising equity capital by du Pont?

A. I would say this——

Mr. Tierney: Is there a question?

I object to the witness volunteering statements here.

Mr. Cox: Would you have the passage read?

[fol. 2763] By Mr. Reycraft:

Q. Yes. Would you read the passage, Doctor Friend?

A. Yes. Mr. Reycraft has marked the passage here.

"It would mean in effect—"

The Court: Just a minute.

Mr. Tierney: Do you want a question?

The Court: Wait for a question. What is the question?

By Mr. Reycraft:

Q. The question, Doctor Friend, is, referring to Dean Jacoby's answer, what is your opinion with respect to the validity of the 40 per cent figure in the raising of equity capital?

Mr. Cox: Can't we have the question read?

I think that would be best—or the answer that you want him to comment on.

By Mr. Reycraft:

Q. The paragraph which I refer to states, "It would find, in effect, that the cost of equity capital to it would mount by some factor between 6 and 40 per cent, and that this would in effect be a penalty under which it would labor in comparison with competing firms that are also competing for resources in the United States economy."

Now, Doctor Friend, referring to that answer, are you aware of any evidence to support that 40 per cent figure?

Mr. Cox: I object to the form of that question. I think you can properly ask the witness for an opinion on it.

The Court: Substained.

[fol. 2764] By Mr. Reycraft:

Q. Doctor Friend, do you have an opinion as to the validity of the 40 per cent figure?

A. I would say the 40 per cent part of this range would be completely inappropriate, in my opinion.

Let me indicate what I mean by giving a simple example.

If you had a stock selling for $100.00, and you divide this up into two pieces, $50.00 each, you gave away $50.00 to your stockholders and then found that you were only able to sell any additional stock at $50.00, not at $100.00—using this sort of reasoning, your cost of equity capital would obviously have increased terrifically.

I would say the 40 per cent figure is completely inapplicable in discussing the effect on the cost of financing.

Now let me qualify that. As I recall, 30 per cent of this 40 per cent is attributable to the capital distribution; 10 per cent is the tax loss effect; but I am addressing myself really to 30 per cent of this 40 per cent.

Q. Now referring to page 3220 of the typewritten transcript, a paragraph in Dean Jacoby's answer states:

> "I observe in this connection that the market value of 3,300,000 shares of General Motors added to supply is about one-tenth of the total market value of all new common stock issues in the calendar year, 1958."

Now referring to that statement [illegible]tor Friend, do you have an opinion as to the validity of the figures which Dean Jacoby used in that answer?

A. Again, I would like to look at the transcript.

Doing a little arithmetic, I suppose the 3,300,000 shares referred to would amount to a little over $100 million, or roughly that magnitude; and if one says that that was one-tenth of the total market value of new common stock issues in the calendar year 1958, that would be roughly correct, [fol. 2765] but with so many qualifications as to make the statement rather misleading.

First of all, in 1958 you had stockholders buying not only something over a billion dollars of non-financial common stock issues, but something like a billion and a half of mutual funds, so that the one-tenth becomes one-twentieth, I sup-

pose, or a little less than one-twentieth of the total market value of all new common stock issues in the calendar year 1958.

Secondly, I think it is fair to point out that 1958 was the smallest year of new common stock financing of recent years; and finally, I have a not entirely theoretical point of qualification. He seems to be interpreting here the amount of new common stock issues as representing the total of investment opportunities presented to investors. I am now quoting.

Actually, at the very least, I suppose one might say that the total amount of purchases of common stock, the gross purchases of common stock, would be about as relevant as net purchases, although admittedly they are both relevant; and this in a year like 1958 would have amounted to roughly 50 billion dollars.

Q. Dr. Friend, does the examination of the additional data which you have considered in your testimony today change any of the opinions which you expressed eariler here?

A. I thought I expressed rather few opinions; but I don't think that I changed my mind about anything substantive in connection with my earlier testimony.

Mr. Reycraft: I have no further questions.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Cox: May it please the Court, this witness has testified at length from statistical computations which Mr. Reycraft handed to him, none of which we have seen.

[fol. 2766] I am not criticizing Mr. Reycraft for that; I suppose he has been working under very great pressure; but I think it is not fair to ask us to cross examine this witness until those compilations which are in effect exhibits have been given to us and we can have had an opportunity to examine them. If we can have them, we will do our best over night and be ready to examine Professor Friend tomorrow morning.

Mr. Reycraft: I will be glad to do that, your Honor.

I have just one request. May we have Dr. Friend back on Wednesday? He has commitments in Philadelphia——

The Court: When? Tomorrow?

Mr. Reycraft: Tomorrow, yes, sir. This will give Mr. Cox a little more time.

Mr. Cox: You mean your want him Wednesday instead of tomorow morning? That is all right.

The Witness: May I ask just one question, your Honor?

The Court: Yes.

The Witness: Is Friday completely out of the question, sir?

Mr. Cox: I hope so.

The Court: Wednesday morning.

Mr. Cox: I wonder, Mr. Reycraft, if it would not be the orderly thing to do at this point to mark for identification the papers that Professor Friend did examine and use on the stand, so that we will know what they are? Could you do that for us?

Mr. Reycraft: Yes.

[fol. 2767] The Witness: May I raise one last question?

The Court: Yes.

The Witness: Since I will have late classes Tuesday, would it be possible to make it Wednesday afternoon, or is that out of the question?

The Court: You would prefer not to come tomorrow, is that correct?

The Witness: Tomorrow, I can't come, that is correct. So if I can come Wednesday afternoon——

The Court: At two o'clock?

The Witness: Surely.

The Court: Very well.

Mr. Cox: That is all right with me, Professor, if that will be easier for you.

The Court: Very well. Wednesday afternoon.

The Witness: Thank you.

The Court: Is there anything further of the witness now?

Mr. Reycraft: Your Honor, there is just the marking of these documents and, as a matter of fact, if your Honor wishes, I believe we can do this if your Honor wishes to recess at this point and save the Court some time.

The Court: Do you have anything else to offer for the next half hour?

Mr. Reycraft: No, your Honor, we don't. We had assumed that the cross examination would continue this afternoon.

The reporter may mark these exhibits as Government's Exhibit 618 through 675 for identification.

[fols. 2768-2769] (Thereupon said exhibits were marked Government's Exhibits Nos. 618 to 675, both inclusive, for identification.)

The Court: The court stands adjourned.

(Thereupon an adjournment was taken in the trial of the above-entitled cause to Tuesday morning, April 7, 1959, at 10:00 o'clock, a. m.)

[fol. 2770]

**Transcript of Proceedings of April 9, 1959**

The Clerk: Case on trial.

The Court: Proceed.

Mr. Tierney: May it please the Court, the Government has developed a new technique in this trial, that is, after they cross-examine a witness and excuse him, then they serve subpoenas on him to come back.

We have one of those victims here this morning, Mr. Beacom. He testified and was cross-examined at length, and finally excused and went on about his business. Now he has been subpoenaed this morning.

He is here under a Government subpoena, called by the Government, and I think in fairness to him he ought to be put on.

Mr. Owens: The Government calls Mr. Beacom.

The Court: The record may show the witness has been previously sworn.

THOMAS H. BEACOM, called as a witness on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Mr. Tierney: Mr. Owens, this is rebuttal; otherwise it is improper. I think we are entitled to know what you propose to show with this witness in rebuttal of the defendants' case.

Mr. Owens: I think if you will let me address the witness, Mr. Tierney, you will ascertain that.

I don't think I am under an obligation——

Mr. Tierney: Do you take the position that this is rebuttal?

[fol. 2771] Mr. Owens: Yes, it is.

The Court: Proceed.

Direct examination.

By Mr. Owens:

Q. Mr. Beacom, I show you Government Exhibit for identification No. 543, which is an analysis of the proposed final judgment of the Department of Justice to implement the decision of the United States Supreme Court in United States v. E. I. du Pont de Nemours and Company, et al., prepared for the General Motors Corporation by Glore, Forgan & Company.

I ask you if you recognize that document?

Mr. Tierney: Will you read the question to the witness?

By the Witness:

A. Yes. He asked me if I recognized this document. It is the final draft, dated March 5, 1959.

It looks reasonably familiar, but I can't swear that I have seen this.

By Mr. Owens:

Q. You can't reasonably swear you have seen that final draft?

A. No.

Q. Did you see previous drafts of a similar document?

A. Yes, I saw some drafts.

Q. Was consideration of those previous drafts a part of your preparation for your direct examination in connection with the depressing effect of the marketing of the securities that would be sold under the Government's proposed final judgment?

Mr. Burnham: Your Honor, at this point I interpose [fol. 2772] an objection. It is now apparent that Government counsel is cross-examining Mr. Beacom about his prior testimony when, in fact, he is called as a rebuttal witness on behalf of the Government.

I don't think it is proper for him to do that at this time, and we object.

The Court: It appears to me that that is a continuation of the cross-examination.

If so, it is improper and objection should be sustained.

Mr. Owens: If your Honor please, I think we are prepared to show that the testimony here of the defendants prepared by Glore, Forgan & Company was circulated to the other experts on the same subject. I think it would expose the fact that in fact it has multiplied the experts on the basis of the study by one expert, and I think we are entitled to show the extent to which other studies are independent studies founded upon the material prepared for another witness.

I suppose they could circulate such documents to ten witnesses, and then say we have ten experts on the same subject.

Mr. Burnham: Your Honor, in cross-examination of Mr. Beacom, Mr. Owens asked him at length what he did in preparation for his testimony. Now, if Mr. Owens feels he didn't ask him enough questions, I suppose that that is unfortunate.

Mr. Owens, when he got through with cross-examination, and I am now reading from page 3158, said, "That is all." And the record shows the witness excused.

[fol. 2773] Now, he has been excused. I renew my objection.

Mr. Owens: Well, if your Honor please, we had no way of knowing at that time that this was the case with respect to this multiplication of expert witness testimony on the basis of a study prepared by one witness, and we think it certainly very relevant to the weight that should be attached to the testimony of the witness to point out the extent to which it is based on this as against other independent studies.

As I say, we had no way of obtaining this information or knowing this until after his testimony was in the record, and we undertook to ascertain the documentary basis for it.

The Court: The question is, is this rebuttal or a continuation of further cross examination.

Mr. Owens: I don't know to what extent in our hearings on relief here we are to be strictly technical on the issue of to what extent it is rebuttal or not.

I think all parties are here with a view to obtaining the

most information that will assist the Court in framing a decree in the light of all the relevant facts.

And I think this appears, from the circumstances, to be sufficiently directly relevant to the weight to be attached to the witness' testimony as to be permitted to examine into it, even if the results might not be strictly within the confines of rebuttal.

The Court: Do you have a response?

Mr. Burnham: Your Honor, I think that makes it quite obvious that it is a continuation of the cross examination. I call your attention to the fact that at Page 3087 of the record, Mr. Owens went at great length into whether this [fol. 2774] was Mr. Beacom's own opinion, the extent to which he relied on the studies of others, and Mr. Beacom stated, when he was asked, "Are you testifying with respect to conclusions that they stated to you," Mr. Beacom said, "No, sir, I have expressed my own opinion."

That is what he testified to, and he has been cross examined about this.

Mr. Owens: We cross examined him, your Honor, with respect to whether the studies he considered, or the study that he made, and we obtained no disclosure of the fact that this Glore, Forgan analysis was one of the bases upon which he made his studies.

The Court: He may answer the question. Do you recall the question?

By the Witness:

A. I believe I do. I think there is quite a simple answer to the statement.

I look on Page 13. and there is a footnote about information furnished to Glore, Forgan by the First National Bank and the Continental Bank.

I can't identify this final draft as anything that I studied, but I was given the courtesy of seeing one draft where they had incorporated the figures that we had given them. That is the purpose that I used it for.

By Mr. Owens:

Q. Did you consider this in the preparation of your own testimony with respect to market factors?

Mr. Cox: I object to the form of the question. What does "this" mean? This document, or some other document?

[fol. 2775] Mr. Owens: The document you have, which is Government Exhibit 543 for identification.

Mr. Burnham: I object, your Honor. The question was asked and answered earlier. He said I can't say that I have ever seen this document before.

Mr. Owens: This document or previous drafts of the same document.

The Court: He may answer.

Mr. Tierney: I object to that. If he has never seen this document, how can he make any comparison with any other? I object to the form of that question.

The Court: Sustained.

By Mr. Owens:

Q. Will you examine the cover page of that document? Take a minute to examine the document itself, and tell me whether or not you had cause to examine and study a draft or what appeared to you to be a draft of a substantially similar document?

A. Well, I pointed out that the figures that are incorporated in this came from us. I was particularly concerned to know that they used them correctly.

I have no recollection of studying this particular statement, and if I did, it was only a part of a wealth of statistical information that I looked at. It did not form my opinion.

Mr. Owens: No furher questions, your Honor, with respect to this witness.

The Court: You are excused.

(Witness excused.)

Colloquy Between Court and Counsel

Mr. Tierney: I trust this is a permanent excuse.

Mr. Metzger: May it please the Court, at this time I move for the admission of the——

[fol. 2776] Mr. Tierney: If the Court please, they subpoenaed Mr. Rogers here, who is counsel for the First Na-

tional Bank. He is a busy man. If they want to put him on, he is here.

Mr. Owens: If your Honor please, we have scheduled our witnesses here in a certain order. I have already explained to Mr. Rogers that he would not be the next witness, and we want an opportunity to talk with him prior to his testifying with a view to presenting his testimony in orderly fashion.

The Court: Can you indicate when you will call him so he may be excused?

Mr. Owens: I think we will call him sometime after lunch, your Honor, but one of the Government counsel would like to talk to him prior to his testifying.

Mr. Tierney: I am advised that Mr. Rogers has an appointment in one of the suburbs for luncheon.

Is that true, Mr. Rogers?

Mr. Rogers: I was supposed to give a speech in Joliet this noon, but I have cancelled that, Mr. Tierney.

Mr. Tierney: If we can get a time certain, Mr. Rogers will be here.

Mr. Owens: I would like to arrange a time convenient for you, Mr. Rogers.

Mr. Tierney: It is not convenient for him.

Mr. Owens: Will you let me finish my sentence?

Mr. Tierney: Yes.

Mr. Owens: I would like to find out, your Honor, when would be a convenient time for us to confer with Mr. Rogers prior to his testimony. We will take him later today or tomorrow as may suit his convenience.

[fol. 2777] Mr. Tierney: Ten o'clock in the morning?

Mr. Owens: Well, I think we can work that out with Mr. Rogers if we have an opportunity to talk with him this afternoon sometime.

Mr. Tierney: Do you want to keep him here so he can talk to you this afternoon?

Your Honor, I think it is grossly unfair to this lawyer, a busy lawyer, to keep him here, sitting in the jury box until they get an opportunity to talk with him.

Heretofore, there has been some courtesy among Government counsel and other counsel, but things have changed in the last few years. I think it is eminently unfair to ask

this lawyer to sit here in the jury box to suit your convenience.

Mr. Owens: If your Honor please, I suggest that we can excuse Mr. Rogers if we can arrange a time to talk with him prior to his testifying, and then we will do the best we can to suit his convenience with a date later on today or tomorrow.

The Court: What time is convenient for you to return this afternoon?

Mr. Rogers: Your Honor, I can come anytime this afternoon.

The Court: Say about three o'clock?

Mr. Rogers: Three o'clock, sir.

The Court: All right. You have a date.

Mr. Owens: Is that an opportunity for us to confer with him, your Honor?

The Court: Either confer with him or put him on as your witness. I presume you are going to use him if you need him.

[fol. 2778] Mr. Metzger: If it please the Court, at this time I move the admission into evidence of Government Exhibits 594 through 616.

Counsel for the Government and for Christiana have agreed that any changes will be satisfactory to both parties.

Mr. Tierney: If the Court please, our objection to Exhibit 616 is there, and if your Honor will look at it, you will find it contains much matter that could not possibly appear in the books of the General Motors Corporation.

Mr. Metzger: Your Honor, the change made——

Mr. Tierney: I haven't seen any change.

Mr. Metzger: (Continuing)—in Exhibit 616 was to remove the word "extract" from the title and make it merely "selective stockholders of General Motors Corporation as of" a given date, November 14, 1957.

It is the last document, your Honor.

Mr. Tierney: Have you stricken that langugae?

Mr. Metzger: I have stricken the title, "Extract from Stockholder List."

The Court: Does that satisfy you?

Mr. Tierney: If it satisfies Christiana as to the relationship.

The Court: The Court understands that there are no other objections, so they are all received in evidence.

(Said documents, so offered and received in evidence, were marked Government's Exhibits Nos. 594 to 616, both inclusive.)

Mr. Owens: The Government calls Mr. John McCullough.

---

[fol. 2779] JOHN MCCULLOUGH, called as a witness by the Government in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Owens:

Q. Would you state your full name and address, sir?

A. John McCullough; M-c-C-u-l-l-o-u-g-h, 700 Book Building, Detroit, Michigan.

Q. And would you state, sir, what your profession is?

A. I am a certified public accountant and a lawyer. I received a Bachelor of Science degree from N.Y.U. in 1928; Bachelor of Laws, Detroit College of Law, 1935; I am a Certified Public Accountant in New York; Michigan, and several other states.

I am a member of the American Institute of Accountants, Michigan Association of C.P.A.'s, American Bar Association, Detroit Bar Association, and the Institute of Management Sciences.

I am co-editor of Montgomery's book on Taxes, the 37th Edition of which was published in 1958. I am one of the principal tax partners in my firm, Lybrand, Ross Brothers & Montgomery, a national accounting firm with offices throughout the country.

Q. And would you tell me, sir, what your principal professional responsibility is?

A. My principal professional responsibility is conferring with counsel and clients as to the various means available for minimizing the impact of income, gift and estate taxes.

Q. Are you, sir, familiar with the proposed final judgment that has been submitted by the Government to the Court?

A. Yes.

[fol. 2780] Q. Now, were you retained by the Justice Department to advise with respect to the probable means and methods likely to be utilized by taxpayers in connection with minimizing such tax liability as may be anticipated under the Government's proposed final judgment?

A. Yes.

Q. And did you make a study in that connection?

A. Yes.

Q. Now, would you tell us what you consider to be the principal problem that the stockholders of du Pont would face in connection with their receipt of General Motors dividends?

A. The outstanding factor in this situation is the fact that under the Internal Revenue Code a corporation can receive the stock of General Motors and pay a tax thereon of 15 cents, a maximum tax of 15 cents; whereas, an individual stockholder would have to pay a tax varying from 20 per cent of the fair market value to, say 87 per cent.

Q. Now, are you familiar, sir, with the ruling of the Internal Revenue Service that was issued in connection with the Government's proposed final judgment?

A. Yes.

Q. Now, what do you understand that ruling to provide with respect to the tax liability of an individual as distinguished from a corporate distributee?

A. The corporate distributee would be required to include in gross income the General Motors stock at $2.08 per share. The individual stockholder would be required to include it in the gross income to the extent of its fair market value on the date of its receipt.

Q. Now, in connection with the preparation of your testimony and in connection with the study that you conducted, did you have occasion to examine the du Pont Exhibit No. 25, which was a study or summary of the estimated addi-
[fol. 2781] tional income taxes that would be payable annually upon a distribution of the General Motors stock by individual beneficial owners of the du Pont common stock?

A. Yes.

Q. And did you note in connection with your study the tax rates that that study showed to be applicable to the shares that would be distributed?

A. Yes.

Q. And in making your study with respect to the probable means or methods that taxpayers might employ, did you assume that those effective tax rates are probably accurate?

A. Yes.

Q. Now, would you tell us, Mr. McCullough, did you consider a number of alternative means or methods by which such tax liability might be reduced or minimized?

A. Yes.

Q. Now, would you start with the first of the methods that you gave consideration to and explain, sir, the basis upon which you believe they would be likely to be employed?

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Cox: May it please the Court, I object to that question, and since my objection is fundamental, I think it may go to this whole line of testimony.

I should like an opportunity to be heard on the nature of the objection.

The Court: Proceed.

Mr. Cox: It is clear to me now from the tenor of these questions that what the Government is proposing to do is to elicit from this witness opinion testimony as to the legality of certain means or methods which could be used to evade or avoid the taxes that might otherwise be imposed upon du Pont stockholders by reason of the Government plan.

We object to the admission of evidence of that kind on [fol. 2782] three grounds. In the first place, we submit that testimony from a witness, an expert opinion with respect to the interpretation of a Federal statute is improper and it is contrary to established principles of evidence.

The Courts have always held in a Federal Court the question of the application of Federal statutes, how they are to be applied, the matters of law in particular transactions, are questions for the Court; it is not a question for an expert witness.

The Court does not need the assistance of an expert witness to decide questions of that kind. This has been tried so seldom because the principle is so well-established that there is not a very great body of case law, but the principle is recognized in Wigmore, and there are cases on which we have prepared a memorandum which I will submit to the Court which hold this without any qualification or doubt.

So that, I may say to the Court, is the first ground of our objection. I will add to that by saying this, that it is quite clear that no matter how Mr. Owens puts his questions that this testimony can only be relevant if the witness is testifying that certain things can be done which will produce a legal result of reducing the taxes. Now, that is simply and solely a question of law which this Court can decide without the assistance of this witness.

We have a second objection which, to my mind, is even more fundamental, and that is that if you assume—and we [fol. 2783] think it cannot be assumed—that the Government is entitled to come forward with opinion testimony about the application of the Federal tax laws to certain transactions, if it is entitled to do that—and it isn't under the rule—but if it is, then it should not be allowed in the context of this case to do it through a witness of this kind. The Government is in a position to present authoritative interpretations of the tax statutes. It can do so by getting a ruling from the Internal Revenue Service; it can produce someone from the Internal Revenue Service who is a qualified witness; it can produce the Assistant Attorney General of the Department of Justice, who is in charge of the Tax Division.

Now surely the Government should not be allowed to come in here with a lay witness, someone from the outside, for whose opinions the Internal Revenue Service will not vouch, will not necessarily accept, whose opinions have not received the stamp of approval from the Assistant Attorney General in charge of the Tax Division, and present opinion testimony on a question of tax law to this Court through such a witness. To allow the Government to do that is to put it in a position where it can ask this Court to act on one basis on an opinion from one man and still leave the responsible agencies of the Government, the Internal Revenue Service and the Department of Justice, in a position to say "that is not our opinion at all."

Now we submit that the Government should not be allowed to put itself in a position where it can talk out of both sides of its mouth on this tax question, and also talk with a forked tongue. There is an old common law principle that your Honor will recall, familiar to all of us who grew up in practice in common law courts, [fol. 2784] which is applicable. That principle is that if a party has control of the witness who is in a position to

give authoritative evidence on a point and fails to call that witness, the inference is that the testimony of that witness would be unfavorable.

Now I submit that when the Department of Justice, the Antitrust Division, comes into this Court and presumes to give, to present to the court opinion testimony, not from someone in the Government, on the application and interpretation of the tax law, but from a lay witness, from someone outside, the only permissible and possible inference is that they know that if they brought someone here from the Internal Revenue Service or from the Department of Justice, the Tax Division, the testimony of that witness would be unfavorable to them. I think that they should not be allowed to do that.

Now, there is a third ground on which this testimony is inadmissible based on the qualifications which have been adduced from the witness in his direct examination. I think even if you assume opinion testimony is admissible, and then if you make the further exception that the Antitrust Division is not required in justice and equity to come forward with a Government witness but can produce a witness from outside for whose opinions the Government assumes no ultimate responsibility—even if they are entitled to do that, they are not entitled to present opinion evidence through this witness. The witness himself has now testified that he is an accountant, he is a member of a firm of accountants and practices as an ac- [fol. 2785] countant. He has also testified that he is a member of the Bar; but the fact remains that he is not a practicing lawyer, he is an accountant.

Now, as the Court knows, there has been a considerable controversy over the role of lawyers and accountants in dealing with tax questions. Some very responsible organizations have given their attention to that problem. The American Institute of Accountants, for example, in 1951, adopted a statement of principles which sought to delineate the difference in the areas within which an accountant as opposed to a lawyer might operate.

Paragraph 3 of that statement—and this is included in the memorandum, which we will submit to the Court and serve upon the Government, says among other things:

> "When uncertainties arise as to the interpretation of law, both tax law and general law, or uncertainties as to the application of law in the transaction involved,

the certified public accountant should advise the taxpayer to enlist the services of a lawyer."

Paragraph 4 of the same statement says that:

"Only a lawyer may prepare legal documents, such as agreements, conveyances, trust instruments, wills, or corporate minutes, or give advice as to the legal sufficiency or affect thereof, or take the necessary steps to create, amend or dissolve a partnership, corporation or trust, or other legal entity."

I particularly call the Court's attention to this reference to corporations, because I have no doubt from the tenor of the examination so far, that that is a direction in which his testimony is tended.

[fol. 2786] Now it does not help the witness in this situation—I might say I am sure the witness is acting all in good faith, but I fear that he has not really been advised of the difficulties and complexities and embarassment involved in this situation; but it is no help for the witness that he is also a lawyer, because that problem has also been considered by some very responsible organizations, and they have pointed out that there is nothing more likely to create friction between the two professions or give rise to improprieties in the practice as someone who is admitted to the Bar but who is actually a practicing accountant to give legal advice. That creates misunderstanding and confusion, because it welds together or confuses two professions which should be kept separate.

To deal with this practice particularly, and certain other practices, the American Bar Association and the American Institute of Certified Public Accountants created a group known as The National Conference of Lawyers and Certified Public Accountants and asked that group to work out a Code of Conduct for both professions, and they did so. That group is presided over by Judge William J. Jameson who is now a Federal Judge, I think, in Montana or Wyoming, and that code specifically deals with the problem of an accountant who is a lawyer, but who is a practicing accountant and is a member of a firm or employed by a firm of accountants; and in part that proposed Code of Ethics reads as follows, in the section entitled "The Lawyer Employed by a Firm of Certified Public Accountants":

[fol. 2787] "Accountants are prohibited from practicing law and desire to avoid creating the impression that they are qualified to do so. The problems inherent in the employment of a lawyer by an accountant or a firm of accountants stem from the fact that public knowledge of such employment may create the erroneous impression in the public mind that the employer,"—

or in this case the firm, I might add——

—"is qualified to practice law."

This proposed Code of Ethics goes on to say that:

"A member of the Bar should not accept employment with an accountant or a firm of public accountants, except as circumscribed above, and should not render legal services or hold himself out to the public as a practicing lawyer."

Now I will not read the rest of the pertinent provisions of this Code, since it is set forth in the memorandum we intend to submit to the Court; but it is perfectly clear that what this Code of Ethics means is that a person who is a lawyer and an accountant must make a choice; he can practice law or can be an accountant. Mr. McCullough has chosen to be an accountant. We have no quarrel with that. But that being his choice, he is not a qualified witness here, even if his testimony should be regarded as admissible on other grounds. I should like at this time, may it please the Court, to give the Government a memorandum which sets forth the considerations that I have stated in a much abbreviated form, and renew, on the basis of what I have said, my objections to this line of testimony. [fol. 2788] And in closing I should like to refer to the point which I think moves me most deeply, which is something that I really find shocking, and that is that the Government should try to deal with this problem in this way instead of getting a ruling from the Bureau of the Internal Revenue Service, or instead of producing a witness from the Government itself, whose words would at least bind the Government and for which they will have to take responsibility.

Mr. Bushby: If the Court please, I would like to make the same objections that Mr. Cox has made.

In forty years I haven't seen anything as fantastic as this, offering a witness to testify as to domestic law.

And there is one more point that I would like to raise; if the Government has a plan here for avoiding taxes, to save people taxes under their plan, I think they should file it. Then I think we ought to have a ruling of the Internal Revenue Service, just as we have had in every other plan filed here.

Mr. Tierney: We certainly join in the objection of counsel.

Mr. Owens: If your Honor please, two principal contentions were advanced by the defendants in connection with the tax aspects likely to arise in the event of the ordering into execution of the Government's proposed final judgment. One of those aspects was that the tax liability to an individual is likely, in all probability, to occur as ordinary income tax payable at the full market value to the taxpayer. They predicated upon that result various arguments with respect to the harshness, the asserted harshness of the Government's proposed final judgment.

[fol. 2789] In addition, in presenting their evidence relative to the marketing problems involved in the marketing of the shares allocable to the du Pont stockholders who would be ineligible to receive their pro rata shares of General Motors stock, they pointed out that because of the fact that the General Motors share to be received would be inevitably received on a fair market value basis; that there would occur tax selling of both du Pont stock to avoid the problem created by the subsequent receipt of General Motors dividends, taxable as ordinary income; and further, that there would be a large amount of selling of General Motors stock upon receiving the General Motors stock as a dividend, because a taxpayer would have no alternative but to sell the General Motors stock in order to raise the cash to pay the taxes.

Various witnesses predicated on the basis of those estimates what they thought the tax consequences were, a volume of selling for tax reasons, both of du Pont and of General Motors, predicated opinions as to the extent to which that would complicate the marketing problem faced

by the trustee in marketing the shares that were allocable to the ineligible stockholders of du Pont.

So far in this trial we have had no suggestion from du Pont or from General Motors, or from Christiana, or from the Amicus Curiae for either du Pont or General Motors that there are methods by which the tax may be avoided. The taxpayer may so arrange his affairs—there is a possibility that he may be able to arrange his affairs so as to avoid very substantially the income tax liability [fol. 2790] that would attach if he merely continues his financial affairs in their present state.

It is true, your Honor, that at the time the request for ruling to the Internal Revenue Service was discussed, motion was made that the Governemnt should be required to file an application for such a ruling.

The Commissioner of Internal Revenue in a letter pointed out that it would be the taxpayer who would be required to file the application for a ruling.

Certainly, I don't think that the Commissioner of Internal Revenue or the Internal Revenue Service takes the position, as suggested by Mr. Cox, that they are under the control of the Department of Justice. We make no such representation.

Mr. McCullough is called in connection with merely demonstrating the existence of the probability that means may exist to substantially avoid the income tax liability here. He is not called here as a witness, your Honor, in order to demonstrate or to prove, but to give his opinion with respect to the law in this area.

We do it, indeed, merely to point up the necessity of obtaining further information with respect to the very important area, and the Government stands ready to cocperate and take the necessary steps in connection with defense counsel and Amicus Curiae who represent the stockholders of the du Pont Corporation to obtain a ruling as to the practicability of these measures which Mr. McCullough is called upon here to outline in general form; not to go down into the very details of the so-called nuts and bolts of the problem, but to show that there is an area here where there is clearly, on the record as it stands now, and which has [fol. 2791] not been brought forward to date, the necessity for enlightenment.

We do that, and we call Mr. McCullough as a lawyer whose activity is concerned principally with the problems in conjunction with his firm and the lawyers that are associated with his firm to show that these suggestions are not fanciful; that they are substantial.

We take it that the Court can have his testimony as we say, not for definitive determination on what the Federal law may be, but in order that in adjudicating this case it may not go forward on the assumption that we are faced with the situation where all the taxpayers would have to pay tax on the individual income tax basis.

For that reason we ask, and on that basis, that this witness be allowed to testify with respect to the studies he has made as to the probable means and methods which are likely to be employed by taxpayers faced with the tax problem and tax liability that would accrue under the Government's proposed final judgment; that his testimony would demonstrate the very substantial way in which the tax picture as disclosed to the Court to date may be very significantly changed, depending upon the definitive answers with respect to these questions.

Mr. Cox: May it please the Court, of course, if the Government proposes to get a tax ruling on these proposals, then the testimony of this witness is unnecessary and a waste of the Court's time and a waste of Counsel's time.

If they do not intend to get a ruling, and I could not [fol. 2729] tell from what Mr. Owens said whether they really intend to or not, but if they do not, then on his own showing this testimony has no probative value unless Mr. Owens intends to ask the witness to say if these means and methods by which he says the tax impact can be evaded or avoided or reduced are lawful in the sense that they will reduce or evade or avoid the tax, because if they aren't, then this testimony again is a waste of time.

Mr. Owens says, well, we are not really trying to prove that they are lawful. Maybe they are; maybe they aren't. This is a question of probability. We want to show that maybe something of this kind can be done.

May it please the Court, when this Court makes its findings and decisions, it cannot make findings on the basis of what may be some vague condition. So, unless this testimony is really offered, as I am sure it is, for the

purpose of creating the impression or providing some foundation for argument that these means are lawful under the Internal Revenue Code, the evidence is a waste of time.

I think it would be more forthright of the Government to step up to that problem and say, we are entitled to put on a witness who will testify that these things can be done, and they will be lawful and they will reduce the taxes. If we can't say that, this whole thing is pointless and fruitless.

Now, I noticed Mr. Owens' comment about not controlling the Internal Revenue Service.

Of course, Mr. Owens doesn't control it, but this suit is brought by the United States. It is not brought by [fol. 2793] Mr. Owens or the Antitrust Division separate from the Government.

Furthermore, the Attorney General certainly controls the tax division.

Why is it, I ask again, why is it that the Government, if it wishes to deal with tax problems and with the construction and application of the tax laws, why is it that they cannot come forward with a witness at least from the Department of Justice or a witness from the Internal Revenue Service?

Why is it that they must go outside and retain a public accountant to come in and instruct this Court on the interpretation and application of the laws?

I submit that there is only one inference possible from this circumstance.

Mr. Bushby: I think Mr. Owens just illustrated my point that the Government, if the Government has a scheme, a plan, whereby the stockholders of du Pont can save taxes that has not been ruled upon by the Internal Revenue Service, they should file that here and we should obtain official rulings as we have on other proposals before the Court.

The Court: Well, the Court's view is that it is doubtful if this evidence should be received. However, I am very curious to know if this witness has a plan that will minimize or reduce the taxes as ruled by the Internal Revenue Service are required to be paid. I would like to hear it. So I am going to receive this evidence subject to objections and possibly striking it later.

Mr. Cox: That is satisfactory.

Mr. Tierney: Mr. Owens, pardon me, but Mr. Kennedy has been subpoenaed here and was to be here at eleven [fol. 2794] o'clock by arrangement with you, I understand.

He is here. I am not suggesting that you put him on, but he is going to leave town this afternoon and be gone, as we told you this morning, and you said you would put him on at eleven. He is here and he has an appointment out of the City.

He is another one of these witnesses subpoenaed after cross examination. He is here, I am told, by arrangement.

The Court: Why not withdraw this witness temporarily and put him on?

Mr. Owens: We would be happy to do that, your Honor.

The Court: All right. You may step down.

(Witness temporarily excused.)

---

David M. Kennedy, a witness called on behalf of the Government, having been previously duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Owens:

Q. Mr. Kennedy, I show you Government Exhibit for identification No. 543, and ask you to examine it, please.

A. It is rather long. You don't propose that I read it?

Q. Do you recognize the document, sir?

A. No, I don't.

Q. Do you recognize it as a study similar to one prepared by the same firm that you have had occasion to examine in connection with your preparation of your testimony relating to the marketing effects of the Government's proposed final judgment?

Mr. Tierney: I object to that. It is contrary to the [fol. 2795] record. He never testified to anything of that kind. It is not rebuttal, and it assumes facts that have not been established in this record.

The Court: Will you read the question, please?

(Question read.)

Mr. Tierney: I object to it also as to form.
The Court: Sustained as to form.

By Mr. Owens:

Q. Did you examine a study, sir, by Glore, Forgan & Company with respect to the market consequences of the Government's proposed judgment?

A. I can't recall having examined a study by Glore, Forgan. I know that they prepared one.

I was called by Glore, Forgan to submit some figures which I turned over to our trust department, and they furnished them to that firm. I have not seen this study.

Q. Did you see any draft of the study prepared by Glore, Forgan?

A. I think there was a draft of a study sent to my office, and I can't recall having read any part of it.

I have not, as far as I recall, studied that report or looked at it. But I have a recollection that when they used our figures, and that was back in February or so of 1958, it was very early, that they gave a typewritten copy or something, but I don't recall ever having read that report.

Q. Do you recall having conversations in which the substance of the report was communicated to you?

A. I have had conversations with John Fennelly, particularly, at various times, and this case might have been [fol. 2796] mentioned in those conversations, but I don't recall any specific discussion.

He did call me and thank me for some figures, and I asked if they were what he wanted and he said yes. I asked if they were helpful to him and he said yes. I don't recall just exactly how he said he used them.

Q. Well, did he discuss with you the manner in which he was going to use them and the conclusions that he had arrived at with respect to the market consequences?

A. He did not.

Q. He did not?

A. No.

Q. Did anyone else discuss the report or substance of the report prepared by Glore, Forgan with you?

Mr. Tierney: If the Court please, this is obviously now not rebuttal. It is cross-examination. The witness has

testified. He was here, and he was excused. This is obviously cross-examination.

The Court: What was the last question, please?

(Question read.)

The Court: He may answer.

By the Witness:

A. I do not recall any discussions of any of the substance of the report. The only thing I do know is that there was a report. This apparently is it. I do have a vague recollection that a copy of a manuscript was sent to my office, but I do not recall reading it or discussing the conclusions reached in it with anyone.

Mr. Owens: That is all, your Honor.

Mr. Tierney: You may be excused. I hope this is permanent.

[fol. 2797] Mr. Owens: We have some material that is being subpoenaed from Mr. Kennedy's organization that we will probably want to question him about.

Mr. Tierney: Well, now let's get this settled. This is a busy man, you Honor. We cannot be here subject to this kind of treatment. The man is here, and he is ready to testify on it. He has other engagements.

Mr. Barrett: Your Honor, we have turned over the first batch of material. We will have some more this noon, too, to turn over and we will get an estimate this noon as to when the rest will be done.

My understanding is that Mr. Kennedy is leaving town this afternoon.

The Witness: I have to testify tomorrow before a Committee of Congress and I would have to leave this afternoon in order to make that commitment.

Mr. Owens: We would be satisfied at this time, your Honor, if we would get material that had been subpoenaed and have an opportunity to examine it and we can later make a determination as to whether it will be necessary to recall Mr. Kennedy.

The Court: All right. You are excused.

(Witness excused.)

Mr. Owens: We will recall Mr. McCullough.

JOHN MCCULLOUGH, recalled as a witness on behalf of the Government, in rebuttal, having been previously duly sworn, resumed the stand and testified further as follows:

[fol. 2798] Direct examination—(Continued)

By Mr. Owens:

Q. Mr. McCullough, at the point where we left off I think you testified that you had considered a number of alternative methods or procedures that in your opinion would be likely to be employed by taxpayers in an effort to minimize the income tax liability that would result as a consequence of the Government's proposed final judgment.

Would you tell us what the first of these alternatives that you considered was, sir?

A. The most practical solution which has occurred to me would be the formation of two corporations, let us say a Class A corporation and a Class B corporation. Now, both of these corporations would issue stock in exchange for du Pont stock. The stocks of both of these companies would be registered and traded on the big board.

The "A" stock would hold the du Pont stock with the understanding that the General Motors dividends would be held in the "A" company.

Q. Would that transfer of stock, sir, in your judgment, from the du Pont stockholders to the "A" investment corporation be considered as a taxable exchange of property?

A. No. That would be a non-taxable exchange. No gain or loss would be recognized on the exchange of the du Pont stock for the new "A" stock, and the basis of the du Pont stock in the hands of the "A" corporation would be the same as it was in the hands of the du Pont stockholder, individual stockholder.

Q. That is to say that in the hands of the du Pont stockholder who exchanged his du Pont stock for the shares of [fol. 2799] "A" corporation, that he would hold the shares of "A" corporation with the same taxable basis as he held the du Pont stock that he transferred in exchange for it?

A. Right.

Q. And that, as you understand it, would be a tax free exchange?

A. Correct.

Q. Now, would you tell us what you understand to be the tax consequences that would flow or occur when "A" corporation, holding the du Pont stock that had been received in exchange for its shares, received a prorated distribution of the GM stock allocable to the du Pont stock it held in its treasury?

A. The "A" corporation would include in gross income the dividend in the form of GM stock at the rate of $2.08 a share. It would receive a dividends received deduction equal to 85 per cent of the $2.08, so that the tax would be roughly fifteen cents payable by the corporation.

Q. So, as you understand it then, is it accurate to say that upon receiving the General Motors stock allocable to the du Pont stock in its treasury it would be taxable as any other corporate distributee with due allowance for the inter-corporate dividend deduction?

A. Yes.

Q. And the effective tax would be fifteen or sixteen cents?

A. Right.

Q. Now, with respect to the policy of "A" corporation, what does your suggestion contemplate in respect to the GM shares received and the subsequent dividends to be paid on the du Pont and General Motors stock?

A. The "A" corporation would retain all General Motors stock which it recieves over this ten-year period in its treasury but it would pay out all the cash dividends which it received on the du Pont stock and the GM stock.

[fol. 2800] Q. And to a stockholder of "A" investment corporation, what would be the amount of distribution that he would receive in the form of cash if all the dividends on the GM and du Pont as received were paid out?

A. He would receive the cash dividends minus the tax on the inter-corporate dividends at seven point eight per cent, minus any expenses of administration.

All the remaining cash, or substantially all the remaining cash, would be distributed to the stockholders of the "A" corporation. They would be required to include that in their gross income as they would any other dividends.

Q. Would it be accurate to say that it is your understanding that as a consequence of that proposal and employing that method that the taxpayer would be in the same situation that he is now holding the du Pont stock directly——

A. Well——

Q. (Continuing)—except for the payment of an inter-corporate dividend tax on the du Pont earnings received by "A" corporation?

A. That is right.

Q. Now, is it your suggestion in connection with that that such a corporation should be listed on the Exchange?

A. Yes.

Q. What is the basis of your proposal that it would be wise to list such a corporation on the Exchange?

A. If such a corporation cannot be formed and the stock cannot be listed, it is my opinion that most other individual stockholders will transfer their stock to corporations for one reason or another. This practice will tend to render the stocks of individual corporations less marketable. The marketability of the corporate stock would be adversely affected.

However, if it could be arranged that this corporation could issue listed stock with a ready market for it, the [fol. 2801] marketability then of the du Pont stock would not be seriously affected.

Q. I gather then it is your understanding that this "A" corporation could be one that would have a very wide group of stockholders?

A. Oh, yes.

Q. Sufficiently large to enable it to qualify for listing on the Exchange?

A. Yes, yes.

Q. You are also stating that absent that you contemplate that it is probable that a number of taxpayers who are situated in the same geographical area would form a corporation similar to an "A" corporation among themselves as du Pont stockholders?

A. Yes.

Q. But the principal difference you see there is that the securities of the "A" company that would have a more restricted group of stockholders would be less marketable?

A. That is right.

Q. And would not have the same liquidity as a corporation with a large number of stockholders?

A. That is right, they would not have listing privileges.

Mr. Bushby: I would like to object to this line of testimony unless the Government will state they will endorse and approve the formation of such a corporation to hold the stock of General Motors and du Pont together.

Mr. Owens: As I pointed out earlier, your Honor, we are merely attempting to bring to the attention of the Court a number of alternate elements in the tax liability that will occur as a result of the Government's proposed judgment that will affect both the tax effects, concerning which there [fol. 2802] has been a lot of argument and dispute, and concerning the extent to which there would be selling of General Motors and du Pont in order to avoid the tax liability, which evidence has from all witnesses assumed that they were subject to regular income tax rates on the fair market value of the General Motors stock received.

Mr. Bushby: I would like Mr. Owens to explain from an antitrust standpoint what is the difference between having GM in a holding company and having du Pont in a holding company.

Mr. Owens: If your Honor please, we are——

The Court: Proceed with the questioning.

By Mr. Owens:

Q. Now, have you considered another alternative form of corporation that you think might be formed by taxpayers?

A. Yes. I have thought of the B corporation. The B corporation would be the same as the A corporation except that the stock of General Motors shortly after it is received, would be distributed as a property dividend to its stockholders.

Q. Well, let me go through this step by step, if you will, Mr. McCullough. In the first instance you understand or you contemplate that the du Pont stockholders would be able to transfer tax-free their du Pont stock to a B corporation?

A. Yes.

Q. And receive back the shares of the B corporation as a tax-free exchange?

A. Correct.

Q. What would be the capital gains basis of the B in-

vestment corporation in the hands of the du Pont stockholders?

A. The same as it was in the hands—that is, the basis of the B stock in the hands of du Pont stockholders would be the same as that of du Pont stock.

[fol. 2803] Q. Now, what do you contemplate with respect to the receipt of General Motors dividends on the du Pont stock that B investment company holds in its treasury?

A. When the cash and GM stock are distributed to the stockholders of the B corporation, the stockholders would include in income as an ordinary dividend the cash plus the GM stock at $2.08 per share.

The excess of the cash and fair market value over the tax basis of the stock in their hands would be treated—rather, would reduce the basis of the B stock.

In other words, the excess of the fair market value of the GM stock over the $2.08—for example, if the market value was $45, then $43 would be applied in reduction of the basis of the B stock.

Q. So, as I understand it, you contemplate B investment corporation, upon receipt of the General Motors stock in species would take that stock and pay it out, pro rate it to its stockholders?

A. Yes.

Q. And that those stockholders would receive that General Motors stock?

A. Yes.

Q. And pay a tax on it based on its—what valuation?

A. It would include in income $2.08 per share, the excess of the fair market value over the $2.08 would be applied in reduction of the basis of the B stock.

Q. So that, for example, if a du Pont stockholder had a base of 100 for his du Pont stock and transferred that to B Corporation in exchange for B Corporation's shares, those B Corporation shares would have the same basis as the du Pont stock, namely, $100?

A. Namely, $100.

[fol. 2804] Q. Upon B Corporation receiving the General Motors stock dividend, they would pay those stock dividends out to the B Corporation stockholders?

A. Yes.

Q. That the B Corporation stockholders receiving the General Motors stock would be taxable not on the GM stock

at its fair market value, but on the basis of the extent to which it was income to the corporation?

A. That is right.

Q. That would be approximately $2.10?

A. Right.

Q. Further, that the difference between the taxable amount received by the B Corporation stockholder, or $2.08——

Mr. Cox: May it please the Court, it would be a welcome relief to have the witness testify instead of Mr. Owens.

The Witness: Well, I will be glad to run over that. Let us assume that the B Corporation stockholder has a share which costs him $100. He receives GM dividends which have a fair market value of $45. $2 of that will be reported as ordinary income. $43 of it will be applied in reduction of the tax basis of $100.

So that the B stock, instead of having a tax basis of $100, will now have a basis of $57.

Now, in the event that the tax basis of a stock, of the B stock, should be less than $100—let us assume it is $40—then he would have a capital gain payable at the maximum tax rate of 25 per cent on the excess of $43 over the tax basis of $40.

So, so long as his basis is high enough, he will have no capital gains tax to pay on the distribution of the General Motors stock.

[fol. 2805] Now, it should be pointed out here, too, that under the Department of Justice's plan, the $45 will not be distributed in one year, but rather over a 10-year period, so that this reduction in basis will be a process of erosion over a period of ten years.

Q. Would you give us the references upon which you rely in concluding that the B Corporation stockholder would be taxable on GM stock received only to the extent that that stock was income to a corporation?

A. Well, in the first place, you have this ruling from the Treasury Department, dated May 9, 1958. Paragraph 12 of that ruling states:

> "The earnings and profits of a corporate shareholder of du Pont will be increased only by the amounts of the distributions which are includable in the gross

income of the shareholder, either as dividends or gained from the sale or exchange of property."

Q. Will you refer in this connection to Section 301(c)(1), which relates to the——

A. 301(c)(1) says:

"The amount constituting a dividend shall be that portion of the distribution which is a dividend (as defined in Section 316) and shall be included in the gross income."

That means it can be a dividend only to the extent that it has been included in "Income," and ultimately in "Earnings and Profits"; and that is at the $2.08 a share.

Q. Now, would you turn in that connection to 316(a)?

A. 316(a) defines the dividend and states:

"It is any distribution of property made by a corporation out of its earnings and profits."

Q. And will you relate that to the Internal Revenue ruling?

A. Yes, that relates to this ruling here, dated May 9, 1958.

[fol. 2806] Q. That is to say, you do take it that the General Motors stock would be a dividend to the extent that it is paid out of earnings and profits of the corporation?

A. Correct.

Q. And under the Internal Revenue Service ruling, the General Motors stock received is earnings and profits only to the extent of its taxable income to the corporation?

A. To-wit: $2.08, minus the corporate tax of 47.8 per cent.

Now, 301(c)(2) goes on and states:

"In the event that the distribution is in excess of the accumulated earnings and profits, then that excess would be applied against the basis of the stock,"

which I just explained a little while ago.

Q. Now, with respect to B corporations, do you have an alternative with respect to whether or not this would be a corporation that you would suggest listing on the Exchange?

A. Yes, I would suggest that both these corporations be listed on the Exchange; and of course I also suggest that

the parties attempt to procure a ruling in this situation. And my own judgment is that the probabilities are good that a ruling could be obtained to carry this particular plan out.

I realize that it is an extremely complicated problem, and that you people and the Internal Revenue would have to get together.

Q. Now in respect to these "B" corporations, assume, if you will, that no such corporations are to be listed on the big board—but is it possible that, in your opinion, a large number of these "B" corporations would be set up by tax- [fol. 2607] payers who were acquainted with one another or were drawn together very——

Mr. Cox: I object to that question. No foundation has been laid for it.

Mr. Tierney: He may be an expert, but he certainly isn't clairvoyant, your Honor.

The Court: Sustained.

By Mr. Owens:

Q. Do you have an opinion, sir, with respect to whether or not taxpayers holding du Pont stock, would be likely to associate themselves together to form a corporation such as you have described, a "B" corporation?

Mr. Cox: I object to that question.

The Court: Sustained.

By Mr. Owens:

Q. Do you have an opinion as to whether or not they would find it advantageous to form such a corporation?

A. Yes.

Q. And do you have an opinion as to what the probable cost of forming such a corporation would be?

Mr. Tierney: Probable what?

By Mr. Owens:

Q. Cost or expense.

A. Oh, I don't imagine it would be a material amount. I think that probably stockholders in groups of less than twenty could get together and form such a corporation.

I think you would have to be careful of the Blue Sky laws to make sure that you didn't require registration.

Q. Now would you further, Mr. McCullough, explain [fol. 2808] to us what consideration you gave to the advantageousness of forming personal holding companies?

A. Well, a personal holding company could be formed in this particular situation.

Q. Under what section would that be—542?

I direct your attention to Section 542 of the Internal Revenue Code.

A. That is Part 2, Sections 541 and thereafter.

Yes, they could form—even if these companies were personal holding companies, the tax could be avoided by——

Q. First of all, Mr. McCullough, would you tell us what you understand the requirements for being classified as a personal holding company are?

A. A personal holding company is one, 80 per cent of whose gross income consists of dividends and other types of income, and whose stockholders—where 50 per cent or more of the stock is owned by five or less stockholders; and there is a very heavy penalty surtax applicable to personal holding companies, equal to 75 per cent on the first $2,000.00 and 85 per cent on anything over $2,000.00.

Q. Is that tax applicable only on what is known as "Undistributed personal holding company income?"

A. Yes.

Q. Do you have an opinion, sir, with respect to what the consequences, tax consequences, would be in the event that a du Pont stockholder, with a few other individuals would form such a personal holding company which exchanged its shares for the taxpayers of du Pont stock? Would that transfer be tax-free.

A. That also would be tax-free.

Q. Now, would you address yourself to what the tax [fol. 2809] consequences would be on the personal holding company upon receipt by it of the General Motors stock dividends allocable to the du Pont stock held as assets by the personal holding company?

A. If this personal holding company were a B-type of corporation, there would be no undistributed personal holding company income, because all of the taxable income of the corporation will have been distributed out. If it is a personal holding company of the A-type, where the GM

is accumulated, the personal holding company surtax in that case could be avoided by paying out all the cash dividends and selling—oh, about four per cent of the General Motors stock which it would hold in its treasury, convert to cash, and then distribute that out to its stockholders.

The Court: The Court stands recessed for ten minutes.

(A short recess taken.)

The Court: Proceed.

By Mr. Owens:

Q. Mr. McCullough, under Section 543 of the Internal Revenue Code, which defines personal holding company income, would it be your judgment that the General Motors stock that was received would be a dividend that was personal holding income under Section 543?

A. Yes.

Q. Does a personal holding company file two corporate tax returns?

A. It files a regular corporation income tax return, and then also a personal holding company tax return.

Q. As a corporation filing a regular corporate tax return, what do you understand would be the reportable, [fol. 2810] taxable income on the General Motors stock received?

A. $2.08 a share.

Q. And on that return as a regular corporation, would it be entitled to deduct intercorporate dividend credit?

A. Yes, it would be entitled to a deduction for dividend received equal to 85 per cent of the income.

Q. That is, the dividend deduction under Section 243(a)?

A. That is correct.

Q. So, then, is it accurate to say that it would pay a tax on the General Motors stock it receives on the basis of $2.08 against which would be applied intercorporate dividend tax deduction?

A. Right.

Q. So that the effective tax on the regular corporate tax return filed by the personal holding company would be about 15 or 16 cents a share?

A. Correct.

Q. Now, is there a surtax or an additional tax that the

corporation has to file if it is classified as a personal holding company under Section 542 of the Internal Revenue Code?

A. Yes. It is required to file another return.

Q. Does that return have a taxable basis or on that return must it report the General Motors stock dividend also?

A. Yes.

Q. To what extent is it taxable on the General Motors stock dividend as a personal holding company?

A. As a personal holding company it is taxed on 100 per cent of the dividends which it receives at the $2.08 figure. The personal holding company is not allowed the deduction for dividends received.

Q. Now, Section 541, did you examine that?

A. Yes.

Q. Does that give the rates of taxes?

[fol. 2811] A. Yes. That is, personal holding company surtax is 75 per cent on the first $2,000 of undistributed personal holding company income, and 85 per cent on any excess of undistributed personal holding company income.

Q. Now, will you turn to—if the General Motors stock that was received by the personal holding company, so classified, on the du Pont stock that it has in its treasury, if it were to pay out to its stockholders the dollar value of that stock in terms of taxable income to its stockholders, would there be any undistributed personal holding company income under Section 541 to which that surtax would be applicable?

A. No, there would be no personal holding company surtax because the tax is only on the undistributed income.

Section 545(a) gives you a credit for the dividends paid so that if the dividends, if an equal amount were paid out, either in the form of GM stock or in cash, there would be no personal holding income surtax.

Q. So is it accurate to state, then, that it is your understanding that the personal holding company would receive its pro rata share of the General Motors stock allocable to the du Pont stock it holds?

A. Yes.

Q. And hold that stock in the personal holding company and pay out to its stockholders a sum of cash equal to the $2.08 taxable income basis?

A. That is right.

Q. Without incurring those surtaxes?

A. That is right.

Q. Now, in discussing and in considering these alternate methods and means by which you think it may be possible to minimize the income tax incidence likely to result to [fol. 2812] du Pont stockholders under the Government's proposed judgment, did you discuss this with other experts in your firm that deal in these matters?

A. Yes, I——

Mr. Cox: I object. What relevance does that have? Are you producing this man as an expert in his own right?

The Court: Sustained.

By Mr. Owens:

Q. Assuming that these alternate means of minimizing the taxes can be successfully utilized, do you have an opinion, sir, with respect to whether or not du Pont stockholders would find it advantageous to sell their du Pont stock in the event that the Government's proposed final judgment were ordered into execution?

Mr. Cox: I object. It is the same question that has been asked before.

The Court: Sustained.

By Mr. Owens:

Q. Have you given consideration, Mr. McCullough, to the likely tax effect of General Motors Corporation giving to its shareholders an option to take their dividends in either stock or cash?

A. Yes.

Mr. Burnham: General Motors Corporation?

Mr. Owens: General Motors Corporation.

By the Witness:

A. Yes.

Mr. Gribbon: I object to that question on the ground of relevance. There is no basis whatsoever for that question in this case.

Mr. Owens: If your Honor please, what we are ad-

[fol. 2813] dressing ourselves to on this is the possibility of simplifying the marketing problems involved here by General Motors giving to its shareholders an option to take part of their General Motors dividend in General Motors stock which they would acquire from the trustee, and in reference to that, we want to consider what the tax result will be in two instances. One, in the instance where the General Motors stockholder has an election to receive General Motors stock in kind or to take cash; and the other instance, where the General Motors Corporation declared a part of its dividends payable in GM stock which it would acquire through the trustee, what the tax incidence or tax payable would be in that instance.

Mr. Burnham: Your Honor, I should like to ask whether the Government is proposing a decree running against General Motors, which would require General Motors to change some dividend policy?

I never heard of such a thing in this case before. I can't see any materiality.

The Court: I sustain the objection.

Mr. Owens: If your Honor please, we are undertaking here merely to point out what lies within the capacity of the defendants to effect a divestiture here.

Mr. Burnham: General Motors is not a defendant.

The Court: The ruling stands. It is sustained.

Mr. Owens: We have no further questions of this witness, your Honor.

Mr. Bushby: If your Honor please, before cross examination begins, I think the Government ought to be asked to [fol. 2814] state whether or not, if a favorable ruling were obtained from the Internal Revenue Service on these devices and schemes which he has testified to, the Government will endorse and accept such schemes and will not attack them.

I think they should state that, otherwise cross examination on any particular question——

The Court: I think that is fair.

Mr. Owens: Well, if your Honor please, we have a number of alternatives that Mr. McCullough has testified concerning, to lay them before the Court and to demonstrate what we think could be the solution to some of the questions presented.

These are alternatives that have been suggested by Mr. McCullough, after having been employed as an expert in

this connection, to advise the trial staff here, as a tax expert. We have permitted him to state what those various alternatives are.

Of course, depending upon the ruling that the Internal Revenue makes with respect to them, the position that we would take would, obviously, depend upon whether, for instance, one big "A" corporation, such as he suggested, be formed, or that a number of small or a multiplicity of "A" tax corporations were formed. The same thing with respect to "B" corporations, depending upon whether the Internal Revenue ruling would permit a multiplicity of "B" corporations, or whether it wouldn't.

I don't think we can intelligently address ourselves to the antitrust aspects of those various forms until such time as we have some definitive idea on what the possibilities are.

The purpose is here to show that there has been no demon- [fol. 2815] stration to the Court or no suggestion to the Court that there are any alternatives open to taxpayers that are likely to be employed, except to stand still and incur the ordinary income tax liability based on a fair market value of General Motors stock.

Now, we are presenting this because we think it is our obligation that this information should be before the Court because it cannot make a full appraisal of the effects of the tax selling that is likely to occur of General Motors stock in order to raise cash to pay taxes, nor can it make an accurate appraisal with respect to the likelihood that du Pont stockholders will sell du Pont stock in order to avoid taxable income at fair market value on the General Motors stock allocable to the du Pont stock they hold.

The Court: Well, you haven't answered counsel's question. What he wants to know is, is this plan acceptable to the Government.

Mr. Gribbon: Your Honor, it would seem at a minimum we should know whether the United States embraces the tax views that this witness has suggested. If they don't, it is immaterial.

The Court: If not, I think we are wasting our time.

Mr. Owens: I would like to point out that we cannot, until we have a definitive tax ruling from the Internal Revenue with respect to the possibilities that Mr. McCul-

lough's testimony suggests—I think you can appreciate that they are very substantial in tax effect on the Government's proposed judgment.

We are not endorsing Mr. McCullough's presentation. We are presenting——

Mr. Tierney: I have a simple question——

[fol. 2816] Mr. Owens: If I may be permitted to finish.

The Court: Wait until counsel is through.

Mr. Owens: We are considerably surprised that some information with respect to these probabilities has not been presented to the Court before. We did not present to the Internal Revenue Service the questions that were framed for purposes of eliciting a tax ruling. They were formed by the Amicus Curiae and by the defendants.

We would have thought that they fully comprehended all the material or alternatives that were available, but it now appears to us very clearly that that is not true.

We think we would be remiss in our duty unless we brought this to the attention of the Court for the purpose of indicating what we think is the propriety of obtaining a further ruling from the Internal Revenue in order to more intelligently guide the Court in its consideration of the probative value of the testimony from the defendants, and from the standpoint in a larger sense of forming and framing an appropriate decree.

Mr. Bushby: He still has not answered my simple question: Will the Government attack any of these schemes if they are availed of?

Mr. Owens: This is a question, in the first instance, your Honor, by the Internal Revenue Service. As your Honor will appreciate, we do not stand here or purport to be tax experts in this field.

Mr. Bushby: He is evading. I am not asking him—I am assuming the Internal Revenue Service endorses the schemes that Mr. McCullough has testified to from a tax standpoint.

[fol. 2817] Now, I am asking whether the United States Government, the Department of Justice, will attack any of those setups if they are availed of.

Mr. Owens: Obviously, your Honor, we have to see the details of different actions taken pursuant to these rules, whether they would be consistent with the antitrust objectives.

To suggest that we would be able to endorse in the abstract any of the whole range and multiplicity of proposals is, I think, a patent absurdity.

Mr. Gribbon: It is just as absurd to ask you, your Honor, to consider in the abstract the whole range of possibilities that the witness has testified to.

The Government has not satisfied the Court, it seems to me, that they are at all relevant to what we are talking about unless they are going to embrace them and ask for a ruling of the Internal Revenue Service on them.

Mr. Owens: We should be happy to obtain a ruling if the—

Mr. Bushby: We are asking, will they attack them from an antitrust standpoint?

Mr. Reycraft: If you will submit a plan, we will be glad to do that.

Mr. Bushby: You are submitting a plan.

Mr. Reycraft: We are pointing out the possibilities of the various plans under the tax laws.

Mr. Tierney: Of course, if the Antitrust Division will say that they approve, take this A plan they are talking about, I then move all the alternative possibilities of this witness be stricken. Otherwise we are just spending a lot of time here.

[fol. 2818] Why take your time to present these things if they are going to object to it after they have presented it? I think it is unfair to your Honor.

The Court: Do you wish to be heard?

Mr. Dallstream: Yes.

Your Honor, we applied for a tax ruling on my application at the outset on the Government plan. A great many conferences were held with the Government, with all counsel, to determine the scope and nature of the application which should be made and the questions which should be certified.

Again, we, as Amicus Curiae, presented the takedown plan, an application was made at the Court's direction, and again the questions that were to be certified to be answered were presented to the Government and conferences were held with all counsel.

We have had two times now to go before the Revenue Department. I didn't hear the Government speaking in

favor of or trying to push a decision on the take-down plan so that we would have it available at the time of this hearing.

I heard not one favorable word from the Government when all of us were arguing to try to get a favorable ruling from the Government on the stock take-down plan.

The only thing that I saw there was, after we all left, you went into a private huddle with the Revenue Department. Nor have I ever had any report nor do I know of anyone who has had a report on what was said in that private conference in which the rest of us didn't participate. [fol. 2819] Now, it is a cardinal rule, and the regulations say that you cannot present a bushel basket full of alternative plans to the Government and get a ruling.

We haven't been able to get a ruling on even the take-down plan yet, and I think it is perfectly obvious that you can't go in on a lot of alternative plans.

What is the use of our trying to come up and take the germ of some of these ideas that have been talked about today, practically all of which, as I understand it, received discussion by counsel in the course of this case over the year and a half that it has gone on, if we haven't any assurance that some phase of that program presented by the Government will be supported by it, and they will try to put it through?

We may present plan after plan. We can go on for years here, and then find the Government saying, well, this little phase of it we don't like.

Now, this little phase of it probably changes the whole tax rule and I think the time has come for us to sit down and seriously talk in a lawyer-like fashion with fairness and with candor how far the Government is willing to go and how far they will join with Counsel in working out some practical program. Otherise it is a waste of time to further consider this testimony and it all should be stricken.

Mr. Reycraft: Your Honor, I feel obliged to state with respect to Mr. Dallstream's comment on our conference with Internal Revenue Service, I do not think he is entitled to know what we talked about with Internal Revenue, but I am going to tell your Honor that we did stay a few minutes after the conference and the Internal Reve-

[fol. 2820] nue Service merely explained to us the basis of their ruling. That is all that was explained.

There is no memorandum of the conference, or I would be glad to give it to them if there had been.

Now, I would also like to make the record clear as to the extent of conferences held with th Government by defendants and by Amicae Muriae with respect to alternative plans of accomplishing any tax advantages.

I do not want to say there were no such conferences, but, aside from the two applications for ruling, I would say there had been virtually none.

I would also say that with respect to the plan which was presented by Mr. Dallstream and which was offered for ruling, we were made aware of that plan for the first time when the proof of Mr. Dallstream's brief was printed, and that is the first time, and we had no opportunity to comment on it.

We had taken no action, certainly, to procure or encourage any ruling unfavorable to the defendants with respect to any tax application they have made. I reassert what Mr. Owens has said with respect to our inability to exert what influence Mr. Dallstream apparently thinks we ought to exert on the Internal Revenue Service. They are an independent group who are obliged to make their own decisions in the light of their own duties.

Mr. Bushby: You still have not answered the question as to whether the Government will attack any of these from the antitrust standpoint.

Mr. Reycraft: If Mr. Bushby will tell us a specific way in which he wishes to do this, we will certainly give him an answer.

[fol. 2821] The Court: Well, proceed with the cross-examination.

Cross-examination.

By Mr. Gribbon:

Q. Mr. McCullough, my name is Gribbon. I am one of the Counsel for du Pont Company. As you can appreciate, we are deeply interested in any way that the tax impact of this Government proposal can be alleviated or minimized.

I might say that we are encouraged at long last since the Government counsel have commenced to take some action.

A. Yes.

Q. But, as you can understand from the discussion which preceded, we think they have gone about it in a totally wrong way. I trust that that has not rubbed off on you, because there is no criticism of your position here intended. We realize that you have been brought in pretty much at the last minute.

I do have a few quesions I would like to ask you, to lay the full scope of your proposal before the Court, so the basis of your views can be understood, and also any qualifications or limitations you may wish to put upon it.

A. Yes.

Q. When were you first retained with a view to testifying in this proceeding?

A. I believe it was last Thursday or Friday.

Q. Last Thursday or Friday.

A. Possibly Wednesday.

Q. And what were the terms of your assignment?

A. To assist the Department of Justice in devising ways and means of minimizing the impact of the income tax upon the du Pont stockholders.

Q. And your assignment was given to you in precisely [fol. 2822] those words—"Can you think of some ways and means of minimizing the tax impact?"

A. Yes, I would say so.

Q. And since last Thursday or Friday, you have developed the proposals that you testified about?

A. I have been celebrating, yes.

Q. And have you prepared some studies and analyses to help you in your cerebrating?

A. No.

Q. You have not?

A. No.

Q. Had you read the Government plan before last Thursday or Friday?

A. No.

Q. Have you read the ruling of the Commissioner of Internal Revenue?

A. No.

Q. Have you discussed your testimony with representatives of the Tax Division of the Department of Justice?

A. No.

Q. Have you discussed it with any representative of the Internal Revenue Service?

A. No.

Q. Or any representative of any other branch of the Treasury Department?

A. No.

Q. Have you been given to understand that Government counsel have discussed your testimony with representatives of the Internal Revenue Service?

A. I believe that they have discussed certain phases of it. These plans have developed over the last few days.

Q. Do you know with whom in the Internal Revenue Service they have discussed your testimony?

A. I believe it was with Mr. Tomasulo.

Q. Who is Mr. Tomasulo?

A. He is in the General Counsel's Office.

Q. In Washington?

A. In Washington.

Q. You did not discuss the matter with Mr. Tomasulo?

A. No.

[fol. 2823] Q. Were you given to understand that the Internal Revenue Service agreed with the views that you testified to here today?

A. Well, I was told that there would be some problems that would have to be worked out.

Q. You were told by Government counsel that there would be some problems?

A. Yes, and Government counsel also told me that there would be some antitrust problems with the solutions that I have suggested.

Q. What were the antitrust problems first that Government counsel told you might arise?

Mr. Owens: I do no know that that is material here, your Honor.

The Court: Overruled.

By Mr. Gribbon:

Q. You are not an expert, I take it, on the antitrust law?

A. That is correct.

Q. But Government counsel did represent to you that there would be some problems from an antitrust viewpoint?

A. Yes.

Q. Could you tell us what those problems were as they were represented to you?

A. Well, with respect to the A Corporation—that is the one that retains the stock—they felt that one corporation might not do the job as far as they were concerned, that it might possibly require the formation of a number of them in order to diversify the voting power.

Q. Yes.

A. Perhaps geographically. But this was—as I understand it, this thought was fairly new to them and had not been given prior consideration.

Q. Yes.

A. And they felt that they would need some time to consider it and study it.

[fol. 2824] Q. Was that the only problem from an antitrust viewpoint that was presented to you?

A. I don't recall that they indicated that there were other difficulties, although I must say that, as I have indicated, they apparently had not had sufficient time to consider this proposal which I made from strictly an antitrust standpoint.

Q. I see

A. Also I believe that the ramifications are so serious that they also indicated that they would like to discuss it further with people in their department.

Q. Yes. Now, from a tax viewpoint, what problems were represented to you by Government counsel as being inherent in your proposals?

A. Which Government counsel do you mean?

Q. Well, to which Government counsel did you speak?

A. I did not speak to any Government counsel.

Q. Did you speak to the man who interrogated you today?

A. Who?

Q. Mr. Owens?

Mr. Owens: I think he misunderstands your question. He understands you to be referring to the Treasury Department people.

By Mr. Gribbon:

Q. No, I am talking about the Government counsel sitting here at the table (indicating).

A. What was the question?

Q. What were the tax problems that they represented to you might be faced in working out the proposals you have testified to?

A. You mean from their discussions with the Bureau?

Q. Yes.

A. Well, they indicated that the Bureau would have to [fol. 2825] be satisfied that the A Corporation should be treated as a corporation.

Q. As a corporation?

A. As a corporation and not as a trustee.

Q. If they were not treated as a corporation, that would be rather fatal to your scheme, would it not?

A. Yes, it would be rather fatal to my plan.

Q. And, as you understand the position of the Internal Revenue Service right now, they are not prepared to say that they would recognize the A Corporation?

A. Well, as I indicated to you, I have not had the opportunity to discuss this situation with them.

Q. That is right. I understand.

A. However, I did—it seemed to me that this corporation, the A corporation, and the B corporation, being formed to carry out public policy, it certainly seemed to me that a ruling could be developed to the satisfaction of all parties concerned.

Q. But as of this time the Government counsel have reservations with respect to your testimony?

A. Oh, yes, definitely.

Q. Both on the tax and on the antitrust side?

A. That is right.

Q. Have you considered the investment aspects of the formation of a corporation such as you have testified to?

A. Yes.

Q. Would you consider that that would be sound from an investment viewpoint?

A. Well, as I indicated, I think the ideal solution is the formation of companies which can be registered on the big board and listed, have a ready market; and the "A" stock and the "B" stock would be offset or substantially

equivalent to the underlying stocks which those companies held.

[fol. 2826] Q. The sole business of those companies, I take it, would be to hold the du Pont stock?

A. That is right.

Q. Are you familiar with the Christiana Securities Company?

A. Not to a great extent, no.

Q. Do you know that it's a substantial holder of du Pont stock?

A. Yes.

Q. And do you know that Christiana sells at a discount compared to the breakdown value of the du Pont shares?

A. Yes.

Q. Would you expect your "A" and "B" corporation to sell at a similar discount?

A. I don't know whether it would be similar.

Q. At a discount.

A. I would anticipate, yes, that it would sell at a slight discount.

Q. Generally speaking, when one corporation is a substantial holder of a stock of the other, the stock of the first corporation does sell at a discount?

A. Yes.

Q. That would be one of the penalties, I suppose, that you think would be worth while——

A. That is right.

Q. Now I take it that the schemes to which you have testified are tax avoidance rather than tax evasion, as those terms have come to be used, is that correct?

Mr. Owens: That is a conclusionary question, your Honor. I don't think it is proper to ask the question of the witness in that fashion. If he wants to say what does he think the tax incidence is likely to be as ruled by the Treasury Department, that is one thing. It depends in that answer, as to whether somebody is going to characterize it as a scheme or——

The Court: Overruled.

[fol. 2827] Mr. Reycraft: May we have the question read, please?

(Question read.)

By the Witness:

A. I wouldn't say so, necessarily. I think that these questions are very often extremely complex. Obviously, the tax considerations are a factor, an important factor, which you give consideration to in creating a plan; and I dare say that in this particular case there are very substantial reasons for the formation of such corporations.

By Mr. Gribbon:

Q. Really, I was trying to get you out of the area of tax evasion. That is bad under the law, isn't it?

A. Oh, yes, yes. Obviously, this isn't tax evasion.

Q. This is not tax evasion; this is just simple tax avoidance?

A. Yes.

Q. Would you agree, sir, that the feasibility of your plan, whether it is the Corporation A or the Corporation B, or the personal holding company, depends upon the Internal Revenue Service, in the first instance, and the Courts ultimately in recognizing that corporation that you would have established?

A. Yes.

Q. That is what it all comes down to, isn't it?

A. That is right.

Q. Are you familiar with the case of Gregory and Helvering in the United States Supreme Court?

A. Yes.

Q. Do you think that has any relevance to this problem?

A. No, I don't think so.

Q. What is the holding in that case?

A. There was a corporation that was set up solely for the purpose of complying with the literal language of the [fol. 2828] code, and I think it was in existence one day, and after it performed its purpose for one stockholder, it was put to death, and the Supreme Court said that the entity should be disregarded.

Q. The Supreme Court did disregard the entity?

A. Yes, it disregarded the entity.

Q. Notwithstanding at all——

A. Notwithstanding at all that legal formalities were complied with. But the melody was not there. The words were met with, but not the melody.

Q. And the Supreme Court disregarded the corporate form?

A. Disregarded the corporate form. But in our case we have these Class A and Class B corporations set up to work out public policy.

Q. Well, but more specifically to work out the avoidance of tax, tax impact that would otherwise take place?

A. Not necessarily. There might be other factors, too.

Q. What would those factors be?

A. I don't know, offhand.

Q. Well, actually, that is the only advantage, isn't it, of your corporations A and B?

A. I don't know. It may be there are others.

Q. You are subjecting the shareholders, who chose to join in Corporation A and B, to additional corporate dividend tax?

A. But they are not required to.

Q. Not required to join?

A. That is right. This is merely a voluntary offering. There are many other substantial reasons why your company and maybe the Government would like to form these companies, wholly apart from the tax end of it.

Q. But you can't think of any right now?

A. I am not an expert in those fields.

[fol. 2829] Q. In the Gregory case, utilization was made of the tax-free provision of the Internal Revenue Code, is that correct?

A. That is correct.

Q. And your scheme would utilize the same—a provision which provides that a transaction which otherwise would be taxable shall be tax-free, isn't that correct? You would invoke Section 351 of the Code?

A. Yes, but that is merely the formation of the corporation. Anybody who decides to carry on their business in a corporate form is privileged to do so; and Section 351 provides that no gain or loss be recognized on the formation of such corporation.

Q. In the absence of Section 351, however, a gain or loss would be recognized?

A. That is right.

Q. And my point simply is that you have to invoke one of the provisions of the Code that gives nonrecognition?

A. That is correct.

Q. In special circumstances?

A. That is correct.

Q. And it was that same kind of provision that the Court in the Gregory case refused to extend to a corporation?

A. No, no. I think in the Gregory case it involved a reorganization, rather than a simple organization of the corporation.

Q. Yes, that is true.

A. And that also, may I remind you, was formed by one individual purely for the purpose of avoiding the tax; whereas, as I say, in this case, here we have a listed stock, formed for the benefit of ameliorating the condition of thousands of stockholders.

Q. So that you would feel that if a lot of individuals got together for the purpose of avoiding tax, you might come up with different results?

A. Sometimes. Particularly if other assets were transferred to these corporations.

[fol. 2830] I visualize the formation of "A" and "B" corporations, whether the Government approves this plan or not.

Q. The business of which corporations would be to hold the stock?

A. Not necessarily. If we can't get rulings for that, we put some other business in there.

Q. Oh, I see.

You would be prepared to work on this a long time, is that it?

A. Yes.

Q. Thinking that you might come up with something?

A. There is no question about it.

Q. Do you recall a decision of the Supreme Court in Higgins against Smith?

A. Yes.

Q. What was the holding in that case?

A. I think in that case an individual, again an individual, attempted to avoid tax by creating an alter ego in the corporate form. He was the sole stockholder, and he attempted to transfer some income to that corporation, and have it taxed by the corporation.

Q. And take a loss there?

A. Or take a loss.

Q. He sold some stock to the corporation and attempted to take a loss?

A. That is right.

Q. Did the Supreme Court tolerate that?

A. No.

Q. You are familiar with that decision, aren't you?

A. Yes.

Q. Do you recall the language of the Supreme Court in commenting on that proposal, where they said:

> "On the other hand, the Government may not be required to acquiesce in the taxpayer's election of their form of doing business which is most advantageous to him. The Government may look to actualities, and upon determination of the form employed for doing [fol. 2831] business or carrying out the challenged tax event as unreal or a sham may sustain or disregard the effect of the fiction as best serves the purposes of the tax statute. To hold otherwise would permit the schemes of taxpayers to supersede legislation in the determination of the time and manner of taxation. It is commanded income and it is benefits which mark the real owner of the property."?

A. Yes.

Q. You would recognize that the philosophy behind the Higgins and Smith decision is something that you would have to contend with in trying to get your proposals——

A. Again, it is a one-man corporation, designed solely for purposes of taking advantage of an economic loss or gain, as the case may be, which he actually can suffer.

Q. Your third proposal, I believe, was for a personal holding company, was it not—one of the alternatives you suggested?

A. Well, I don't think I actually proposed that. I think Mr. Owens was anxious for my views as to what might happen if we had a personal holding company. I merely pointed those results out.

My recommendation would be to form either A or B corporations.

Q. I see.

A. Now, assuming that we cannot get a ruling from the Internal Revenue Service to the effect that these A and B corporations should be recognized, as I have outlined, then I would recommend the formation of A and B corporations, but to have other businesses transferred to them and have a number of stockholders get together to form these corporations, so that the likelihood of a tax would be extremely remote.

Q. Then it is your opinion that an individual stockholder could not successfully incorporate his du Pont stock and [fol. 2832] secure recognition of that corporation by the Revenue Service?

A. I would certainly not recommend it, if we can't get a ruling.

Q. What is your opinion as to the chances of a ruling on that transaction?

A. Well, I think that the chances of getting a ruling on A and B stock—that is listed stock——

Mr. Owens: Maybe he misunderstands the question. I think the question is, what are the chances of getting a ruling on the du Pont stockholder incorporating his du Pont stock.

Is that the question?

By Mr. Gribbon:

Q. That is correct. Leave your A and B corporations aside. Let us assume you can't register them or that you have some trouble with the Blue Sky Laws, which I think you mentioned would create problems.

A. Yes. If we couldn't get a ruling on it, I would not recommend the formation then of a purely holding company.

Q. I see. Whether it was one stockholder—whether it was one stockholder or five stockholders.

A. Yes.

Q. You think that just wouldn't work?

A. It just wouldn't work. The penalty would be too great. If the exchange were not recognized under 351 for one reason or another, the tax consequences could be serious.

The Court: The Court will now recess.

(Whereupon a recess was taken in the trial of the above-entitled cause until 2:00 o'clock p.m. of the same day, Tuesday, April 7, 1959.)

---

[fol. 2833] Before Hon. Walter J. LaBuy, Tuesday, April 7, 1959, 2:00 o'clock, p.m.

Proceedings resumed pursuant to recess.

Present: Same as before.

The Court: Proceed.

---

JOHN MCCULLOUGH, a witness called on behalf of the Government in rebuttal, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-examination—(Continued)

By Mr. Gribbon:

Q. Mr. McCullough, it is a fact, is it not, that the problem which the Government enlisted your assistance to solve arises out of Section 301 of the Internal Revenue Code which taxes individual shareholders one way and corporate shareholders another way in the case of a dividend in kind?

A. Yes.

Q. That is sort of the seed of the problem here, is that right?

A. Yes.

Q. How long has that provision been in the Code?

A. I think since 1954.

Mr. Owens: If your Honor please, in respect to the last question about the Government enlisting Mr. McCullough's expert advice with respect to solving the problem, I don't think that is accurate or consistent with his previous testimony.

[fol. 2834] He wasn't engaged to solve a problem or to devise a solution to it, but merely to advise us with relation to what taxpayers are likely to do on the basis of his experience and knowledge of taxpayers in a situation where

they want to do what they can consistent with the Code to minimize the tax, and I think that should be clear.

By Mr. Gribbon:

Q. In your opinion, is there any real likelihood that that provision of Section 301 might be repealed?

A. I don't recall reading anything indicating that there may be a change in that provision. So far as I know; it probably will continue in there.

Q. Your plans depend very much upon its continuing in the law, do they not?

A. Oh, yes.

Q. Are you familiar with Sections 452 and 462 of the 1954 Code?

A. Yes.

Q. What do those sections deal with?

A. Section 452 treats of prepaid income.

Q. Yes, and Section 462?

A. And 462, reserves for estimated expenses.

Q. Those two sections were enacted as part of the 1954 Code, were they not?

A. Yes.

Q. And you know that they were subsequently repealed?

A. They were subsequently repealed, yes.

Q. And they were repealed with retroactive effect, were they not?

A. Yes.

Q. Do you recall the circumstances that gave rise to the repeal of those two sections?

A. Yes. The treasury was advised of the tremendous loss of revenue which would accrue if they were not repealed retroactively, and in accordance with their recom-[fol. 2835] mendation, why, those sections were repealed.

Q. Retroactively?

A. Retroactively.

Q. Was there not considerable evidence that the two sections had been misused by taxpayers?

A. No, I wouldn't say so. I think there was quite a bit of evidence that there would be a serious loss of revenue.

Q. The accounting profession resisted the repeal of those sections, did they not?

A. Yes.

Q. In your judgment, if a plan of the type you have described as your Corporation A or Corporation B were involved, would you consider that there might be a move for a change in Section 301 to avoid the result?

A. I doubt very much that that would occur. There have been very, very few instances in the history of our income tax law where retroactive changes have been effected. It is a policy of the Internal Revenue not to refuse—or not to apply a ruling once it has been granted. They have the legal right to modify it, to attack the transaction, but as a matter of policy, they do not.

Q. That is the policy of the Revenue Service?

A. The policy of the Internal Revenue Service.

Q. But as you have indicated, Congress has, and fairly recently, repealed with retroactive provision successfully two sections?

A. Yes.

Q. I believe you testified that you have considered various means by which an individual duPont stockholder might avoid paying the income tax that would be due upon distribution of General Motors?

A. Yes.

Q. Have you in your direct testimony told us all of the plans that you thought about or came up with?

[fol. 2836] A. Yes, I believe so. There are other alternatives available for people who find themselves in the high surtax brackets who receive dividends.

Many individuals form real estate companies and transfer stock to the real estate company. The income from the dividends is used to pay off the indebtedness which was incurred at the time of the acquisition of the assets. So long as the rents exceed 50 per cent of the gross revenues of the corporation, it is not a personal holding company, and they don't run afoul with Section 531, the accumulated earnings tax, because the income must be used to liquidate the indebtedness to which the property is subject.

Q. So that if a shareholder wanted to go into the real estate business in a reasonably big way, you think there might be ways of his avoiding the tax?

A. Yes, that is correct, and it has been done.

Q. Did you suggest that method to the Government counsel?

A. I did.

Q. Did they suggest you should not testify?

A. No; no.

Q. Were there any other methods that you developed?

A. I believe I referred to the situations that are available, investment situations that are available. Individual stockholders can buy property which is subject to depreciation, and under the 1954 Code, why, you can take double declining depreciation, which affords you heavy deductions over a period of, say, four or five years, and thereafter you dispose of the property, but during that four or five years' interval, you have an excess of deductions for depreciation over the rental income, and such deductions are available for offsetting, say, dividend income.

This means, or this plan, if you don't mind my using [fol. 2837] that term, is available for people who receive fees or salaries, and then on top of that they have some dividends from stocks from their employing corporations, and that device is used fairly extensively, together with the real estate corporation.

Q. I suppose if the individual taxpayer lost enough money drilling oil, he, too, would have offsetting deductions?

A. Yes, that is right.

Q. You just have to put enough money into the ground to offset the income from the du Pont dividends?

A. That is right.

Q. Have you considered whether an individual du Pont stockholder might transfer his stock to a corporation located in a foreign tax haven, such as Bermuda or Liberia? Would that be an effective method of avoiding the tax?

A. I think that would be quite dangerous.

Q. Why is that?

A. Well, I mean, there it would be clearly set up for prohibited purposes.

Q. Do you mean it would not be permissible under the Internal Revenue Code?

A. I think it would be attacked.

Q. On what basis?

A. Well, I think when you set up a foreign corporation,

you have to get permission from the Internal Revenue Service, and I doubt that that would be forthcoming.

Q. On what basis could it be denied?

A. I think there is a section that says you have to get permission from the Commissioner.

Q. On what grounds is he permitted to deny you the right to do that?

A. The ground that it is set up to evade or avoid taxes.

Q. I see. You think this might be regarded by the Commissioner as a plan to avoid taxes?

A. If it were done in a foreign corporation, yes. That is right, I do.

[fol. 2838] Q. You are aware, I assume, that a substantial amount of du Pont stock is held by trustees?

A. Yes.

Q. Have you considered whether a trustee would be in a position to participate in the plans you have suggested?

A. Yes. That is one of the reasons why I suggested the formation of the B corporation. Under the B corporation plan, the stock, the GM stock would be distributed out——

Q. Yes.

A. And the trustee would, therefore, have legal title to the GM stock and could dispose of it as he saw fit under the trust instrument. That is, it would be available for the life tenant.

Q. He would have to transfer his du Pont stock to a corporation?

A. First.

Q. Yes. In other words, he would have to divest himself of legal title of the stock that he holds in trust?

A. That is correct.

Q. And turn it over to a corporation?

A. That is correct.

Q. And permit it to be voted and held along with all other corporate assets?

A. That is right.

Q. Do you have an opinion as to whether a trustee could legally do that?

A. Yes. I have discussed this question with a New York attorney who specializes in trusts and he said that he saw no real problem there, that it was not a real change in substance as far as the investment was concerned; that he

would get approval of the beneficiaries and then simply go ahead and do it.

Q. In order to achieve the desired tax result, you would have to satisfy the revenue service that it was a real change in substance, wouldn't you?

A. Well, as I indicated this morning, I certainly recommend that steps be taken to procure the ruling.

[fol. 2839] Q. Yes, and the ruling would depend upon the revenue service recognizing that a transfer from the individual holder to a corporation was a real change in substance, would it not?

A. No, no, I wouldn't say so.

Q. They would have to recognize——

A. I think the Internal Revenue Code recognizes the fact that these are not changes in substance; they are merely changes in form. That is why there is no tax.

Q. But in order to permit the dividend in the General Motors stock to be taxed to the corporation rather than to the individual, the revenue service would have to be satisfied that the corporation had real substance?

A. That is correct, absolutely correct. The Internal Revenue Service would have to be satisfied that this corporation was set up for legitimate purposes to effectuate the company policies.

Q. And I am suggesting that in order to achieve the desired tax results, you would have to satisfy the revenue service that the corporation had real substance?

A. Oh, yes.

Q. And to achieve the desired results with the trustee, you would have to satisfy the trustee or some lawyer that the transfer didn't have real substance?

A. Well, I think we are playing on words there.

Q. Isn't that what you said?

A. Not precisely, no. No, I said to get, for the exchange to be tax-free, that is really a change in form.

Q. Yes.

A. That is why there is no tax. You can have the substantial merger of two large corporations and exchange stock for stock, and you can have two pieces of paper instead of one. The theory is that there has not been a suffi-

[fol. 2840] cient change in substance so there would be no tax.

Q. All right.

A. But both corporations in that case, they are both matters of substance, yet there is no tax on the exchange.

Q. Now, take the next step, when it comes to how the Revenue Service is going to tax a distribution of the General Motors stock; will they pass it to the individual or to the corporation to whom he has transferred? You agree the Revenue Service has got to recognize that corporation in sum and substance?

A. Oh, yes, definitely.

Q. Now, this notion of transferring of stock held by an individual to a corporation in order to avoid or minimize a tax is not a new one, is it?

A. No.

Q. Do you recall the case of Commissioner against Smith in the 2nd Circuit several years ago?

A. Was this one of those tax avoidance one-man devices?

Q. Yes, it was. That is right.

A. I think there were several Smith cases. I do not recall just which one you are referring to, but I do recall one that was similar to the ones that you mentioned this morning where an individual sets up a one-man corporation for the purpose of avoiding a tax and puts it in a corporation or treats it as an alter ego. The Government says in those cases that we shall not regard them but pierce the corporate veil.

Q. In that case in particular, the taxpayer was attempting to have the dividends taxed on a corporate basis, which at that time was no tax at all.

A. Oh, yes.

Q. It was even better than the one you have in mind.

A. Yes.

[fol. 2841] Q. And you recall the Court refused to let it do that?

A. Yes, I do.

Q. Are you familiar with the National Investors case that was decided by the Court of Appeals in the 2nd Circuit?

A. I believe there were several of those, too.

Q. I wonder if you recall the statement which Judge Learned Hand made in that case commenting on this whole

problem of when to recognize a corporation for tax purposes. He says:

"That, as we understand it, is the same interpretation which was placed on corporate reorganizations in Gregory against Helvering and which has sometimes been understood to contradict the doctrine that motive to avoid taxation is never as such relevant. In fact, it does not trench upon that doctrine. It merely declares that to be a separate jural person for the purposes of taxation a corporation must engage in some industrial, commercial or other activity besides avoiding taxation. In other words, that the term corporations will be interpreted to mean a corporation which does some business in the ordinary meaning and that escaping taxation is not business in the ordinary meaning."

A. Yes.

Q. You would accept that as a correct statement of law, would you not?

A. Oh, yes, I certainly would.

Q. And I take it that you place your hope in the idea of some large scale holding company where, instead of one person transferring a stock to avoid taxes, a lot of stockholders would transfer?

A. That is right, the stock would be listed on the big board and be a creature definitely of substance, a creature for the purpose of effectuating the public policy of this country.

[fol. 2842] Q. The public policy being to avoid the tax that would otherwise be imposed?

A. No, no; this is one method of working out a complicated problem.

Q. Does it enter into your calculations that such a company would have to engage in some business?

A. That certainly would improve the situation. It would improve the probabilities of getting a ruling.

Q. Suppose it did not engage in any business and it is simply a big company?

A. That is probably one of the problems that the service is referring to.

Q. And you are not too confident on that one?

A. Well, I would be a lot more confident if you, for ex-

ample, told me that if we formed these A and B corporations it would help you in the solution of your problem, or, likewise, if the Department of Justice were to tell me, "Yes, we need these corporations for this reason or that reason."

Q. But they have not so told you?

A. They have indicated that this is something that should be fully explored. They have indicated that there is a possibility that with these corporations they can work out something which otherwise would be impossible, or that this is one avenue that might be available to work out this situation.

Q. How many corporations do they have in mind? Have they advised you?

A. Well, as I indicated this morning, this is something they have not had the time to thoroughly study. They did think that possibly four or five A corporations, separated geographically—but this was really off the cuff conversation, I mean, it was without time for a full study.

Q. And four of five B corporations also?

A. I do not really recall. I have the impression that they thought maybe one would be enough of that.

[fol. 2843] Q. And I take it it is your opinion that if these corporations would somehow engage in some kind of business it would materially help?

A. Yes.

Q. And I assume it would have to be a very substantial business, would it not?

A. Yes. It could not be——

Q. If a corporation owned 100,000 shares of du Pont stock it could not just run a corner drug store?

A. No, sir, it couldn't.

Q. So the business would have to bring in an income roughly equivalent or perhaps even greater that the income from du Pont stock?

A. No, I would not go that far. I would not go that far.

Q. It would have to be a substantial business?

A. But I think it should be something substantial, yes.

Q. Have you been asked to prepare a ruling request for the Internal Revenue Service on any of the proposals you testified to?

A. No, sir.

Q. Would it be a difficult job for you to prepare such proposals?

A. No.

Q. If the Government would give you the necessary information you could do it without too much trouble?

A. Yes, yes.

Q. Would you feel it essential to disclose in your request for ruling that a significant reason, perhaps the principal reason for forming a corporation, would be to avoid the income tax that would otherwise be due?

A. I do not think that would be necessary.

Q. You would rather not disclose that?

A. I do not think that it would be at all necessary to do so. It would be quite obvious.

Q. Do you think the ruling would be much good if you [fol. 2844] did not disclose that?

A. Well, you should disclose all the facts.

Q. That would be a fact, wouldn't it?

A. And I think that fact is quite obvious. You could spell it out. You could spell it out and say that the effect of this would be thus and so; but I do not know that you have to point those facts out that are so obvious.

Q. You think they would assume that?

A. I am sure they would.

Q. Have you ever received a ruling in any situation that you regarded as comparable to this?

A. No. No, nothing. I have not had any previous experince that parallels this.

Q. This is a problem of some magnitude. Don't you so consider it?

A. I certainly consider it so. It involves antitrust problems; it runs the gamut of our whole economic life, I would say.

Q. You have had only a week-end to consider it, isn't that correct?

A. That is right.

Q. And ordinarily, in your firm, you devote rather more time to this kind of a matter?

A. That is right. But it was explained to me that the time was very short.

Q. Do I do your position an injustice, Mr. McCullough, in suggesting that you feel that the tax impact of this proposal is just so great that somehow or other a means will be found to satisfy the Revenue Service that the tax

shouldn't be imposed in accordance with their original ruling?

A. Yes, sir. And I would go on further and say that certainly something is going to be done to minimize the impact of it also.

Q. Would you accept the suggestion of legislation as the more likely answer than administrative action?

[fol. 2845] A. I am glad you raised that point, because I intended to bring out in my testimony this morning that I would recommend an amendment to the Frear bill to provide that in the event that it would not pass before the incorporation of the A and B that an amendment would be added which would say that A and B could be liquidated tax-free to the stockholders.

Q. Did you say A & P?

A. A and B.

Q. We had been discussing the A & B Corporation, as you know.

A. Under an amendment to the Frear bill, you see. And then everybody can liquidate these companies and terminate them.

Q. You would have in mind liquidating these companies eventually, I suppose?

A. Yes.

Q. This couldn't go on forever?

A. Well, except perhaps in those cases, assuming we can't get a ruling holding that a mere holding company will not do the job, or will do the job, then I would—I believe that most people will transfer these stocks to business corporations; and how long they will stay in existence, I really don't know.

Q. But if you were to set up your A and B companies, would you represent to the Internal Revenue Service that there would be an intention to liquidate at some time in the future?

A. On the A and B corporations, yes, I think I would. I would point out that the purpose of these corporations was to enable these parties to get together to effect a solution to this problem, and when the problem was solved, these corporations would be liquidated.

Q. Sort of a temporary means of getting around this tax that would otherwise be imposed?

A. That is right.

Q. Of course, upon liquidation of the corporations, there would be a capital gains tax?

A. There would be a capital gains tax, and I think the Frear bill should be amended to permit the tax-free liquidation of them.

[fol. 2846] Mr. Gribbon: If your Honor please, at this time I should like to renew the motion to strike which Mr. Cox made at the beginning of this witness' testimony, and add to it the additional reason that examination of this witness has disclosed that he is not here presenting any sort of a plan which has the official approval of the Department of Justice or the Internal Revenue Service, and indeed the facts show that the persons who put the witness on the stand have very serious reservations both as to the tax and as to the antitrust feasibility of the plans that he has so generously discussed with us. I say this without any effort to besmirch the work that I know this witness has done in this case. I think it is just an imposition upon the Court and the parties, and upon the witness to have asked him over the weekend to deal with this problem. And I think it would be wrong to permit this to remain in the record.

Mr. Bushby: I move to strike also on the further ground that the Government attorneys have not answered my queries as to whether they would embrace any of these schemes and not attack them under the antitrust law.

Mr. Owens: If your Honor please, I think Mr. Gribbon's cross examination has disclosed, as much as our direct examination has, the substantiality of the problems that the various alternate means that Mr. McCullough has suggested present; and we have not had and do not have any authoritative view of the Internal Revenue Service as to how they would deal with these various alternatives.

[fol. 2847] As I mentioned in requesting Mr. McCullough to explore this area for us, we did not indicate to him that we were going to embrace any solution that he might think was one that should be further explored. We wanted to check with him and find out just how substantial the probabilities are on the basis of his experience that these various methods of minimizing the tax liability would be resorted to.

Accordingly, we present him for that purpose, and in

order to indicate what we think is an important requirement that we obtain some authoritative reference on the problem. As I say, we have had—and it is true—a short time to deal with this problem; but neither du Pont nor General Motors, nor the amicus curiae suggested that these problems should be included among those in the requests for rulings that were presented to the Internal Revenue Service at their request.

I don't know what studies they have made, nor the extent to which they have given consideration to these various alternatives, but I think it is imperative that we should have some fuller explanation, and some fuller exploration of these factors that bear so significantly on the tax liability in this case.

Mr. Gribbon: Your Honor, may I reply just briefly?

First, I think there may be some confusion between Mr. Owens and the witness as to the terms of his assignment. In cross examination at Page 2781 the witness said that his assignment was to assist the Department of Justice in devising ways and means of minimizing impact of the income tax upon the du Pont stockholders.

[fol. 2848] I should merely like to say for the record, your Honor, that the du Pont Company is exceedingly anxious to know of any ways and means by which the tax upon its stockholders could be minimized, and our objection to this testimony is not that we don't want to go into those things, but we don't think that the proper basis has been laid for them in this testimony.

The Court: The Court will allow the testimony to stand, and if not helpful it is at least interesting. So the motion to strike is denied.

Mr. Owens: I do have one request, your Honor. I would like to ask the witness to explain if he would the terms of our engagement that Mr. Gribbon read in excerpt from his answer that he was employed to enable us to devise means of avoiding the tax. I think if we would allow Mr. McCullough to explain that issue that he will indicate what the terms of his engagement were more fully.

Mr. Gribbon: That wasn't an excerpt; that was the whole answer.

By the Witness:

A. No. I would like to correct that statement. I thought I used the word "advised," but I didn't; I used the word "devised."

The Department of Justice asked me to inform them of alternative procedures that are available to minimize the impact of this tax. He asked me to tell him what plans my firm would probably suggest to our clients to assist them in minimizing the burden of this tax.

I am sorry that I did make the mistake in outlining the terms of the engagement.

[fol. 2849] The Court: Is there anything further?

You are excused.

Mr. Dallstream: Your Honor, I would like to ask a few questions of this witness. I have not had an opportunity before that seemed appropriate.

The Court: Very well. Proceed.

Cross-examination.

By Mr. Dallstream:

Q. Have you given any consideration as to whether the companies which would be formed as your so-called A and B companies would be embraced within the terms of the Investment Company Act?

A. Yes, these stocks would have to be registered.

Q. And this would be an investment company within the meaning of the Investment Company Act?

A. I am not sure about that.

Q. Had you contemplated that all of the earnings would be passed through to the shareholders of these companies?

A. All of the earnings would be passed through with respect to the B corporation. The A corporation would retain the General Motors stock and there would be an accumulation of earnings to the extent of the tax basis of the GM stock which had been accumulated.

Q. Then would you seek to have the B corporation so arrange it that the taxation would fall upon its shareholders without the interposition of the inter-corporate dividend tax as an investment trust?

A. No. The B corporation would pay the tax on the inter-

corporate dividend. The B corporation would then distribute the GM stock to the stockholders. The GM stockholders would report—I mean the B corporation—pardon me—the stockholders of the B corporation would report the [fol. 2850] GM stock as a dividend at the rate of $2.08 a share. Any excess of the market value over the $2.08 would be applied in reduction of the basis of the stock in the B corporation; and if there was an excess over the basis of the stock in the B corporation, such excess would be taxed at capital gain rates.

Q. Had you given any consideration as to whether the activities of this corporation would have to be diversified as to its holdings?

A. That is one of the problems which would have to be worked out with Antitrust, and also with the Service.

Q. Under the Holding Company Act, had you given any consideration to the requirements of the Holding Company Act as to diversification?

A. No.

Q. What consideration had you given as to how this one, two, three, four or five corporations would be organized? How would you get these people together to be incorporators or stockholders of the company?

A. Well, I imagine the decree of the Court could provide that the trustee should incorporate such a company, and then make the stock available to whomsoever wanted——

Q. Have you considered the fact that you are not dealing with a res or an asset of the du Pont Company, but you are dealing actually with the stockholders' own stock?

A. Yes.

Q. Did you take into consideration the fact that none of these stockholders are parties defendant to this proceeding?

A. Well, I don't see that that makes much difference. I think that this also would go out.

Q. You just think the Court could enter an order transferring the stockholders' shares to a corporation in ex- [fol. 2851] change for this stock?

A. No. No, I imagine he could order the trustee to procure the stock and have the offer tendered to the shareholders.

Q. Now, over what period of time could you do this, do you think?

A. Oh, I don't really know but——

Q. Have you contemplated it would be a continuing offer over a period of years?

A. Well, that is one of these problems that would have to be considered.

Q. Well, as a matter of fact, wouldn't this all have to be done at one time so far as each corporation that was organized was concerned, in order to get any of the tax benefits that you claim?

A. Well, the sooner it would be done, the more benefits would flow, yes.

Q. Well, as a legal matter, wouldn't all the shares of du Pont have to go into the corporation at one time and the shares in exchange for it come out at the same time?

A. Yes, I think that is right.

Q. And that would require the voluntary action of each and every one of those shareholders, would it not?

A. That is right; that is right.

Q. Have you considered what a problem it would be to deal with 200,000 shareholders, some of whom may be minors, some of whom may be on the high seas, and others could not be located—what it would be to handle that situation?

A. Well, I think you certainly would have enough time to publicize this thing. In addition, there is a terrific motivation on the part of stockholders to make this exchange.

Q. Have you given consideration as to whether they would all have to be original incorporators in order to avoid blue-skying this in the several states of the forty-eight states, or fifty, rather?

[fol. 2852] A. Well, this stock would be registered and would have to comply with the laws of the various states, that is so. It would be a tremendous undertaking, no question about it. Registration is expensive, but the alternative is so bad that I am sure that something like this is going to be done.

Q. As a matter of fact, the alternative is so bad that unless something like this should be done, they shouldn't put the Government plan through, should they?

A. I think that is right.

Mr. Dallstream: Thank you.
The Court: Any other questions?
You are excused.

(Witness excused.)

Mr. Reycraft: The Government calls Paul Howell.

---

PAUL L. HOWELL, a witness called on behalf of the Goverment, in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reycraft:

Q. Will you state your full name, Professor Howell?
A. Paul L. Howell.
Q. What is your present association, Professor Howell?
A. Well, I am a consulting economist.
Q. Will you state in a general way your education and training?
A. I was graduated from the University of Washington in 1931 and subsequently received a cum laude degree, Bachelor of Business Administration, and later a Master of Arts degree in Business in 1934. Then I went east and attended Harvard University, and after several years of intermittent study, I was granted another Master of Arts degree in Economics, supplemented by study both in Harvard Business School and Harvard Law School.
[fol. 2853] Q. Have you engaged in governmental work, Professor Howell?
A. Yes, sir.
Q. Will you describe in a general way what that work has been?
A. Well, I did some work for the Temporary National Economic Committee in the Department of Commerce, and the old F.E.R.A. and W.P.A. in the middle thirties.
In 1938 I became a staff member of the Securities and Exchange Commission in what was then the Public Utilities Division. I left after a short time in 1938 and rejoined the SEC in early 1940, and remained on the rolls until I re-

signed in 1947, during the course of which I had a military furlough and another leave of absence. Subsequently I was retained as an expert and financial consultant by the SEC in the spring of 1955.

I would say that my total active duty with the SEC was just under four years.

Q. Have you done any university teaching?

A. Yes.

Q. In what subjects, and where?

A. Taking the experience since the war, I taught two and a half years at Northwestern University, just north of Chicago here, and then I went to New York where I taught from 1948 to 1954 full time at New York University as an Associate Professor of Finance, and three additional years part time.

I also taught at Columbia University as a visiting professor each year from 1950 until 1958.

Q. Have you done any professional consulting work in connection with rate hearings or rate return hearings?

A. Yes, sir.

Q. Will you describe in a general way what that work has been?

[fol. 2854] A. I have participated in a number of rate cases involving rather lengthy testimony with respect to the cost of capital, and what constitutes a fair and reasonable rate of return for public service corporations.

Q. Pardon me. Had you finished?

A. These have involved various types of utilities, water, electric, gas, telephone, in which I have testified a number of times, and a rather lengthy proceeding before the Civil Aeronautics Board involving the aircraft or air transport industry.

Q. Are you now engaged in a study for the Twentieth Century Fund?

A. That is correct.

Q. Will you describe the general nature of that study?

A. Three years ago I was awarded a small grant of money to make an investigation of the investment management control and activities of the funds in pensions.

This study is limited to industrial pensions, using that term broadly to include railroads and public utilities as

well as the narrow one. In other words, it did not cover very much the question of civil service employees.

Mr. Reycraft: Rather than asking you to describe your written work, I will ask to have marked for identification, as Government Exhibit No. 676, a three-page document which lists your publications as well as your experience, which I offer in evidence.

Mr. Cox: No objection.

The Court: It is received.

(Thereupon said document, so offered and received in evidence, was marked Government Exhibit 676.)

By Mr. Reycraft:

Q. Professor Howell, have you made a study of the testimony of the defense witnesses in this case?

[fol. 2855] A. I have made a study. I certainly haven't studied it so exhaustively and completely as to call it definitive.

Q. You have analyzed it, have you not?

A. I have read a good deal of it, sir.

Mr. Tierney: Of what witness?

By Mr. Reycraft:

Q. Will you state the witness's testimony? Do you recall? Did you read Mr. Emerson's testimony?

Mr. Tierney: Let him testify.

Mr. Bushby: Don't lead the witness. I object.

The Court: Yes. Let the witness testify. The testimony of what witness did you study?

By the Witness:

A. Mr. Lenz's; Mr. Jacoby's, briefly; Mr. Emerson's; Mr. Fennelly, or rather the exhibit which I think Mr. Fennelly was said to have written, exhibit 543 and 542; Mr. J. Russell Forgan—they were the chief ones.

Q. Have you examined——

A. Wait a minute. There was Mr. Stanley's testimony and Mr. Roger Murray's testimony and Mr. Natrella's. Those are the chief ones.

Q. Have you examined Mr. Kunhardt's testimony?

A. No, I did not. I have seen excerpts of it, but I can't say I examined it.

Q. You have seen excerpts from it?

A. Yes.

Q. Have you also considered the 1958 annual report of the du Pont Company and its reference to this litigation?

A. Yes, I have.

Q. Will you state what your recollection of what you examined is?

Mr. Bushby: I object. I don't think it is a relevant question, what this man's reading has been. He has been [fol. 2856] put on for some purpose, certainly not apparent. I don't believe it is rebuttal. I think it is more of the same, an extension of the Government's main case.

The Court: That is the purpose of this?

Mr. Reycraft: The purpose, your Honor, is to relate the plans which have been made by the defendants, to answer claims made by the defendants in this litigation.

Mr. Tierney: What are they?

Mr. Reycraft: It took you several weeks to put it in.

Mr. Tierney: What are you going to rebut? Obviously you are not going to rebut Mr. Kunhardt. He didn't read his testimony.

Mr. Reycraft: I would like to have him rebut the testimony with respect to tax losses with respect to stockholders of du Pont.

The Court: The question is, has he read a report to stockholders by du Pont?

Mr. Reycraft: Yes.

The Court: Was that introduced in evidence?

Mr. Reycraft: Not by us. I will ask another question, your Honor.

By Mr. Reycraft:

Q. Are you familiar with the claims which have been made in the defense case with respect to losses which may be incurred by stockholders of the du Pont Company?

A. Some of them.

Q. Have you made any analysis of these alleged losses in connection with the preparation of your testimony?

A. Not any analysis like Mr. McCullough made.

[fol. 2857] Q. You are not a tax expert, I take it?

A. No, sir.

Q. Have you made any attempt to analyze the amount of stock which might be sold for tax reasons as has been claimed in some of the defense testimony?

Mr. Bushby: I object; no foundation has been laid for any of this testimony. A man gets on the stand, says he has read some other testimony and doesn't agree with it, but there is no basis for his knowledge or expertise in that connection.

Mr. Reycraft: Your Honor, I believe he is qualified as a financial expert. He has examined the testimony. He had no way of knowing or none of us has any way of knowing in advance what the detailed testimony will be.

The Court: He may answer. Overruled.

Mr. Cox: I think it would help if we could have the form of the question restated. It isn't clear whether the question refers to losses caused by the sale of du Pont or losses caused by the sale of General Motors, and I do think if the witness is going to testify about specific claims of loss that Mr. Reycraft should be asked to direct our attention to the page in the transcript and passage to which the witness' testimony is directed. Otherwise we won't know what he is talking about.

Mr. Reycraft: Well, there have been so many references, your Honor, that I do not think it is really feasible to do that. I think the witness can testify that he is familiar, and he has in a general way, with the testimony. He is familiar with claims that have been made with respect to tax losses, and that is what I would like to ask him about.

The Court: All right, which stock are you referring to?

[fol. 2858] Mr. Reycraft: I am talking about tax selling of General Motors stock in order to pay income taxes on dividends in General Motors stock paid by the du Pont Company.

Mr. Cox: Now, what is the question about that?

Mr. Reycraft: The question is:

By Mr. Reycraft:

Q. Have you made any analysis of possible selling which might result?

A. Yes.
Q. What has that analysis been?
A. Well, my analysis——

Mr. Tierney: If the Court please, I object. This witness has not shown himself competent to answer that question. He has not shown any knowledge of tax or—he has written a lot of publications, but he has not shown himself competent to answer this kind of a question.

What experience has he had?

The Court: Well, you will have a chance on cross examination to find out what he knows about the subject.

Mr. Cox: May we have the question read now?

(Question read by the reporter as follows:

"Q. What has that analysis been?")

By Mr. Reycraft:

Q. What analysis have you made, Mr. Howell?
A. Well, I have looked at—particular figures stand out in my mind, the figures which were in the Glore, Forgan report to GM and the figure which was put in the 1958 annual report of du Pont Company to its stockholders which was published a few weeks ago.

[fol. 2859] Mr. Cox: Just a moment. May it please the Court, I object to the witness talking about the Glore, Forgan report which is not in evidence unless Mr. Reycraft offers it in evidence. It isn't in evidence now.

Mr. Reycraft: Well, Mr. Forgan's testimony——

Mr. Tierney: As a matter of fact, Mr. Reycraft objected to it being put in evidence.

The Court: If it is not in evidence, it isn't proper to question him about it.

By Mr. Reycraft:

Q. You have examined Mr. Forgan's testimony, have you not?
A. Yes.

Mr. Cox: I object to that. Let the witness testify.

The Court: The form of the question is leading. I think he has already said he has reviewed the testimony of Mr. Forgan.

By Mr. Reycraft:

Q. Will you state, Professor Howell, what your conclusions are with respect to the tax selling of General Motors stock as I previously stated the question?

A. I think it is greatly exaggerated.

Q. And will you explain your reasons?

A. Well, the reasons are that as I have looked through the testimony that has preceded mine I have seen no reference or a miniscule reference to activities, schemes, devices, plans, or programs which might be used to avoid or minimize or defer these Federal income taxes which would occur as a result of the passing out of the General Motors stock to du Pont stockholders.

I have, over my business observation period, observed and have great faith and confidence in the ability and in [fol. 2860] the ingenuity of businessmen and tax counsel, when put to it, to devise means to reduce and defer taxes.

I have the feeling from reading this testimony that the strongest possible case of the most possible taxes has been put into the record without considering a balanced presentation of possibilities which might be done to minimize and decrease the taxes.

Mr. Tierney: I move to strike that answer, your Honor. It was not obvious when the question was asked that it was going to be wholly immaterial and irelevant. I ask the answer be stricken.

Mr. Reycraft: This goes to the issue of the amount of stock that is to be sold. I think the witness——

Mr. Bushby: No foundation has been laid.

Mr. Cowen: No foundation has been laid. It is just a conclusion of the witness without a foundation whatsoever.

Mr. Bushby: He has not proved to be a psychologist.

Mr. Reycraft: The witness is an economist and——

Mr. Cox: I must say, may it please the Court, that Mr. Reycraft now seems to be embarking on the same thing we we went through this morning, except in the case of this witness we are one step removed even from a tax accountant.

As I understood his answer, he said there must be some way that people will find to avoid paying taxes. Of course, one way to do it is not pay the taxes and hope the Collector does not catch you.

The question is whether these things are lawful, and

I do not believe that Mr. Howell himself would assert that he is here in the capacity in which he can give tax [fol. 2861] advice to anybody or make any suggestions about whether these devices would be lawful or would be successful.

The Court: Well, maybe he can explain that on cross-examination.

Mr. Cox: Perhaps he can.

By Mr. Reycraft:

Q. Professor Howell, have you in your examination of the testimony considered any other basic assumptions which appear to be inherent in his testimony?

Mr. Cox: Whose testimony? I object again, unless we get something specific.

The Court: Sustained.

By Mr. Reycraft:

Q. (Continuing). Dean Jacoby.

Mr. Cox: Well, let's have the passage. You much know it.

By Mr. Reycraft:

Q. Have you examined the testimony, Mr. Howell, of Dean Jacoby?

A. I have examined it.

Mr. Tierney: What did he say?

Mr. Reycraft: He said, "Yes."

Mr. Cox: He said, first, "briefly," and now he says he examined it without "briefly."

By Mr. Reycraft:

Q. In examining his testimony, did you infer that there were any other assumptions which you would think relevant?

Mr. Cowen: I object to the form of that question.

The Court: Sustained.

[fol. 2862] By Mr. Reycraft:

Q. Did you consider that there was an assumption that all the stock to be sold would be General Motors?

Mr. Cowen: I object to that. It is calling for a conclusion without any foundation.

The Court: Overruled.

By the Witness:

A. May I have the question?

Mr. Reycraft: Yes. Read the question, please.

(Question read.)

Mr. Bushby: He only asked him about General Motors stock. He is not asking about any other stock. I object to the form of the question.

The Court: Overruled.

By the Witness:

A. Yes.

By Mr. Reycraft:

Q. Did you consider that other stocks might be sold by investors?

A. Yes.

Q. And did you take that into consideration in evaluating his testimony?

A. Yes.

Q. And what conclusion did you draw with respect to what difference that might make as to the amount which might be sold?

A. It might make a very substantial difference if you sold just General Motors, or if you sold certain other things, or used cash dividends.

Q. Did you examine in this connection the evidence which was introduced with respect to the purchases by General Motors of its own stock for bonus purposes?

A. Yes.

[fol. 2863] Q. And what did your examination show in this respect?

Mr. Tierney: Are you asking now what did he examine, Mr. Reycraft?

Mr. Reycraft: I am asking him to state what his examination showed.

Mr. Tierney: Well, I think before he answers that question you had better find out what he examined.

Mr. Reycraft: That is what I am asking.

By the Witness:

A. Well, I have read the bonus plan.

The Court: Speak louder, please.

The Witness: I have read the bonus plan, your Honor.

Mr. Tierney: Is that the extent of his examination, Mr. Reycraft?

By Mr. Reycraft:

Q. And are you familiar with the quantity of stock which General Motors purchases under its bonus plan?

A. Well, they have been—well, there is introduced a General Motors Exhibit No. 8, which says, "Bonus Awards Showing Division Between Stock and Cash, 1938 to 1957," by years, giving total bonus award, award value of stock and cash, per cent stock as of total.

I think in the annual report of GM for 1958 the figures are somewhat supplemented. I do not think the exact breakdown is here.

In my recollection the bonus was about 50-odd million for '58.

[fol. 2864] By Mr. Reycraft:

Q. Did you consider the amount of this bonus which was cash and the amount which was stock?

A. Yes, sir.

Q. Did you consider whether any variations might be made in these proportions?

Mr. Cox: May I have that question read?

(Question read.)

Mr. Cox: Variations by whom? I object to the form.

Mr. Reycraft: By General Motors.

Mr. Cox: Then I object to the question on the ground that this man is not competent to answer.

Mr. Reycraft: He has examined testimony, he has answered claims which have been made with respect to marketing impact, with respect to tax selling, and he cannot testify except with reference to what the facts are.

Mr. Cox: May I raise another question? My recollection is that no defendant put in any testimony on General Motors purchases.

Mr. Reycraft: He referred to General Motors Exhibit 8.

Mr. Cox: Was that put in as part of the General Motors case?

Mr. Tierney: It was put in on cross examination.

Mr. Cox: Cross examination of one of your witnesses. This isn't rebuttal.

By Mr. Reycraft:

Q. Have you considered whether the testimony of the witnesses you have read with respect to marketing problems would take fully into account the purchases by General Motors of its bonus stock?

[fol. 2865] Mr. Tierney: If the Court please, I object to the form of that question. It is not proper to ask a witness what he thinks about what somebody else shows, some other witness.

The Court: Sustained.

By Mr. Reycraft:

Q. Professor Howell, have you given any consideration to the testimony concerning the purchase by pension funds of General Motors stock?

A. Yes.

Q. And what was your consideration in this respect?

Mr. Cox: Now, I object. Here we have a good example of why this technique should not be followed. There was only one witness for the defendants who testified on the subject and that was Mr. Kunhardt. This witness has said he has not read Mr. Kunhardt's testimony except a brief part.

Mr. Reycraft: He has read excerpts.

Mr. Cox: I think therefore we should have the specific

part of Mr. Kunhardt's testimony that you are going to examine him about so we will all know what it is.

By Mr. Reycraft:

Q. Will you describe in a general way, sir, the part of Mr. Kunhardt's testimony which you have read?

A. Well, I remember an excerpt which was where he said that if the price was right he would buy General Motors stock.

Q. And did you read any of his testimony relating to pension funds generally?

A. I don't recall any.

Q. What is your opinion, sir, with respect to the amount of money which pension funds might invest in General Motors stock?

[fol. 2866] Mr. Bushby: Kunhardt testified only as to what the Guaranty Trust Company would do. This witness is not competent to testify.

Mr. Reycraft: And the Guaranty Trust Company manages many hundreds of pension trusts, as your exhibit shows, Mr. Bushby.

Mr. Bushby: Yes, and he testified what the Guaranty Trust Company managing those trusts would do. This witness cannot testify what Guaranty Trust Company would do in management of pension funds.

Mr. Cox: Are you asking him that?

Mr. Cox: Are you asking him that, Mr. Reycraft, about——

Mr. Reycraft: I am not asking what Guaranty Trust would do; I am asking what the pension funds would do.

Mr. Cox: That is not directed to Mr. Kunhardt's testimony.

Mr. Tierney: How is this witness competent to answer that question?

Mr. Reycraft: He has made studies of pension funds; he is now engaged in such study.

Mr. Bushby: It isn't rebutting Mr. Kunhardt's testimony, your Honor.

Mr. Reycraft: It is rebutting all of the marketing testimony put in by the defense. This is a marketing fact, which the defendants have considered and which the witness has considered in replying to the defendants' testimony.

Mr. Cox: Why wasn't this witness presented at the time Professor Murray was presented? He had testified about this.

[fol. 2867] By Mr. Reycraft:

Q. Can you answer the question?

Mr. Cox: I object to the question as not proper rebuttal.

Mr. Dallstream: Your Honor, it seems to me that we are going pretty far afield here when a witness who has had no possible foundation laid showing that he has made any particular investigation except that he read a book, wrote a book, or went to college, comes up and starts in to take over the prerogatives of the Court and take everybody's testimony in the case, and then expresses a contrary view about it. This witness has had no experience; he has made no investigation of these matters. He hasn't gone out and talked to the people who run these investment trusts; he hasn't found out about their investment policies.

By Mr. Reycraft:

Q. Will you explain for Mr. Dallstream's benefit your experience with respect to pension funds and investment funds?

Mr. Bushby: I still object, your Honor. It still wouldn't be rebuttal of Mr. Kunhardt's testimony.

The Court: Overruled.

By Mr. Reycraft:

Q. Can you answer my question?

A. When I was engaged almost three years ago by the Twentieth Century Fund, I was requested to make a study analyzing the investment policies of pension funds. In the course of that investigation I had interviewed people who [fol. 2868] run or manage funds and tried to evaluate their investment policies. Some of these views, opinions, findings, have been put in published form, which are referred to in the 3-page statement on my professional background.

Q. Do you have an opinion with respect to the amount of pension funds which might be invested in General Motors stock in the future?

Mr. Bushby: I object to that, your Honor, to the form of the question.

Mr. Cowen: Your Honor, I don't know how anyone could answer that question.

Mr. Reycraft: He has an opinion——

Mr. Cowen: He has an opinion of how much money should be invested in any one stock of all the pension funds in the United States?

Mr. Cox: I assume excluding the Bankers' Trust Company, since you are not asking him about that?

By Mr. Reycraft:

Q. Can you answer the question?

Mr. Cox: The Guaranty Trust? Are you asking about the Guaranty Trust?

Mr. Reycraft: Would you like to ask the witness a question?

You heard the question.

Mr. Cox: I object to it, because Mr. Reycraft at one point said he wasn't asking about that.

Mr. Reycraft: I am asking about all the pension funds.

Mr. Cox: Including those administered by Mr. Kunhardt?

The Court: He may answer.

[fol. 2869] By the Witness:

A. Pension funds fall into a number of categories, Mr. Reycraft.

Mr. Tierney: I object to the witness——

Mr. Reycraft: Your Honor, I object to this procedure.

Mr. Tierney: I object to the witness——

Mr. Reycraft: Mr. Tierney will complain about wasting time in about two minutes.

Mr. Tierney: I won't waste any time.

I object to the witness reading from the document.

Mr. Reycraft: He is referring to notes, just as Mr. Forgan did.

Mr. Tierney: I am watching him read. And I object to him reading.

The Court: Do not refer to any memorandum or any documents unless you first have exhausted your recollection.

The Witness: Yes, your Honor.

The Court: All right. Proceed and answer the question.

By the Witness:

A. As I started to say, pension funds are divided up into a number of groups. There is money which goes to insurance companies, there is money which goes to union funds, and then there are so-called self-administered and trusteed or bank-administered funds. The self-administered or bank trusteed funds now are running about three billion dollars a year.

If we were to apply the proportion which General Motors own fund uses for its limitation which is 2½ per cent of the total fund, no more will be in any one security, you [fol. 2870] might take that as a rule of thumb or a preliminary guide as to the amount of money which might be put into General Motors. Two-and-one-half per cent of three billion, in my recollection, is 75 million dollars.

Another approach might be to say, well, there are now about 1.2 billions of dollars flowing into the common stock from these industrial pensions; and if you were to say that General Motors is approximately 4½ per cent of the securities on the Big Board and if you bought General Motors on the pro rata basis of 4½ per cent of 1,200,000,000, you would get something over $50 million.

Just as a basis, you know that General Motors has outstanding some 282 million shares, and the current price is about $48. As of the end of December this year, or last year, the market value of all securities on the Big Board was $277 billion. I think that comes out to 4½ per cent in proportion.

Well, there you have two ranges, perhaps between $55 million and $75 million, which might go into General Motors common stock by pension funds alone.

I might add this comment: that there are over a thousand stocks on the Big Board and a number of them are not, in my opinion, suitable for pension funds. They are suitable for trading on the big board, but not suitable for pension fund investment, either from a lack of regularity of income, the instability or the speculative character of the company.

Then, if you had 1.2 billion dollars being put into common stock, you might be forced, in order to fully take care

of that amount of money, to put a larger percentage in [fol. 2871] General Motors and what its proportion of the Big Board is. But it seems to me a conservative figure for pension funds in the United States, not talking about union funds or talking about what insurance companies do with their pension money—you might find something more than $50 million flowing into General Motors stock, or something in excess of a million shares.

Q. Have you given any consideration to any difficulties which General Motors might have in raising capital over the next ten-year period?

A. Yes.

Q. And what consideration have you given to this question?

Mr. Tierney: If the Court please, I don't know that it follows that because one labels oneself as an economist that he is entitled to express an opinion on every subject.

This witness is incompetent, and I, as a lawyer, cannot sit by here without making objections, permitting this witness to answer any question on any subject that Counsel should want to ask him.

What does he know about investment banking? Now because he has written books and has taught some place, and has a few degrees, and he calls himself an economist, I insist that he is not competent to answer this last question, and he hasn't been shown to be competent.

Mr. Reycraft: The witness's qualifications speak for themselves.

Mr. Tierney: They certainly do. And on that basis I move that all of his testimony be stricken.

Mr. Reycraft: As far as these questions are concerned, [fol. 2872] they relate to claims which have been made by the defendants in this case.

The Court: He may answer.

Mr. Cox: May we have the question read?

(Question read.)

By the Witness:

A. I have here an exhibit—I do not have the number—which is called "Table 10," and the title is "General Motors Corporation and Its Consolidated Subsidiaries,

Services of C[redacted]Funds, 1948-1957, as Indicated by [redacted]pecial Tools Charged to Costs, Pro-[redacted] Depreciation and Obsolescence, Income Reinvested in the Business, and Sale Retirement of Securities."

This table indicates for the decade involved here—

Mr. Burnham: May we know what he is reading from, your Honor?

The Court: Will you identify what you are reading from?

Mr. Reycraft: It is Table 10. It is a Government exhibit. He has considered this in connection with his examination of the defense claims.

The Court: Exhibit number what?

The Witness: It is listed here, your Honor, as Table No. 10, and I read the title as, "General Motors Corporation and the Consolidated Subsidiaries, An Analysis of the Sources of Corporate Funds for a Post-war Decade."

Mr. Tierney: It is a Government exhibit, but then what is he rebutting here—his own exhibit?

Mr. Reycraft: He is rebutting testimony given by defense witnesses with respect to the ability of General Motors to do financing.

[fol. 2873] The Court: He may answer.

By the Witness:

A. This exhibit shows that a substantial amount of money was gotten from amortization of tools and from the depreciation, but I should pass that by in my evaluation.

General Motors has reinvested from retained income some two billion, none hundred million, or almost three hundred million dollars a year during this past-war decade. They have had available from the application of funds from the sale or retirement of securities a figure of five hundred and eighty-four million dollars, which is almost 60 million dollars a year during this period, as a source of funds from outside of the business. This, I think, represents the only financing which was done by the company in twenty-five years or more, with the exception of the preferred stock which was sold in 1946, which was one hundred million dollars, a $3.75 dividend, and a buying of notes from insurance companies of 125 million sometimes in 1946.

This shows, together with what is indicated, which takes care of the debt financing in 1954, either late 1953 or early

1954, and the stock rights in 1955 and other sales, that they have financed a huge post-war expansion from internal sources mostly, and a little from external sources in about the ratio of 5 to 1.

By Mr. Reycraft:

Q. Have you considered any other factors to be relevant in forming an opinion with respect to General Motors' ability to do financing?

A. Oh, yes.

Q. What other factors have you considered?

A. Well, I have considered the reputation of General [fol. 2874] Motors in Wall Street and the quality and credit of the company; and my examination would not indicate that General Motors has the highest credit of any company, but I do not know of any that I would say has higher. In other words, the conclusion is that the credit is as good as that of any company with which I am familiar. The credit and quality of the company is not exceeded, and I am comparing it with such companies as Consolidated Edison and American Telephone & Telegraph and Standard Oil.

Q. Have you considered——

A. In support of this opinion or finding on my behalf, or belief on my part of the quality and credit raising ability of General Motors, is its long record of earnings. I don't think it has made a negative net income since 1921. It didn't make very much in 1932—$164,000; but a lot of other companies were very deep in the red at that time. It has had a continuous dividend record—I don't know how long, but it runs back to 1921, in my recollection.

The investment fraternity evaluates this company very highly; the financial services like Moody's evaluate it very highly. They gave bonds, which were not secured bonds but were debentures and a huge amount, 300 million or approximately that, a Triple A rating. That is an independent opinion, not my evaluation; that is somebody else's. The fact that they sold preferred stock with a $3.75 dividend is an indication that the people who bought it felt that that was an excellent quality, or else they wouldn't have bought it for that rate, because that is a very low rate for a preferred stock dividend.

Furthermore, looking at the question of the basic strength

[fol. 2875] of the company, the demand for its product—it sells among other things automobiles, I am told. This is an age of transportation and, while it is not a public utility in the sense of having a franchise that is monopolistic, it is catering to a demand that is an almost absolute necessity in a modern industrial economy. It is true you can't store electricity and that you can defer a purchase of an automobile from the third year to the fourth year perhaps. As we found out in World War II, we can defer it quite a bit; but there is an absolute demand for a large amount of transportation.

Another factor, I think, which is perhaps the most important one, is the quality of the management. It may be objected that I don't know anything about the management and I have never talked to Mr. Fred Donner, and such. However, the management does have a reputation. Not many people get to talk to Fred Donner personally, but it does have a reputation as such. Management has shown by their actions over the past thirty years—a continuing management, a replaced management—that they have been very successful in, shall we say, translating cash resources into productive assets, which could make earnings and dividends and could compete effectively. Perhaps, I think that may be the major factor which is reflected in these others—the dividend record, its earnings record, its ability to sell preferred stock at a low rate, and the bond rating, and such. Those really stem from the capacity of the management which has been demonstrated over a long period of time through many vicissitudes to earn money and to compete effectively.

Q. And what conclusion do you draw with respect to its ability to financing over the period of divestiture?

[fol. 2876] A. The company has very high credit. With very high credit, you can do either preferred stock financing, bond financing or equity financing. The company has demonstrated that by doing all of those in the post-war decade.

Q. Have you given any consideration to the relationship of General Motors debt structure to its earnings?

A. Yes.

Q. And what was your consideration in that respect?

A. Oh, General Motors has now about $285 million of de-

bentures outstanding, with a coupon rate of 3¼, and a fixed charge of $8,500,000.

It had earnings in 1957 which those fixed charges recovered before taxes of some two hundred times. That is my recollection. In the last year the earnings were down a bit, taxes were down a bit, but my recollection is that those earnings recovered about 130 times.

Just as a contrast, in order to be legal for investment of insurance companies in the State of New York, the coverage for non-secured debt securities must be 1½ times before taxes on an average in the last five years, and in one of the last two years.

Q. How does debt financing compare to equity financing in terms of its cost?

A. Oh, it is much cheaper. It is much cheaper because of the tax factor and the rate factor. I would say ordinarily it runs one-fourth, just speaking generally.

Q. Four times as much for equity financing?

A. It costs four times as much, yes.

Q. Would you explain the tax factor you referred to?

A. That is the 52 per cent Federal income tax which is placed upon income before it can be passed on to the stockholders or goes into surplus as retained earnings.

[fol. 2877] Q. Have you considered in connection with forming your opinion the recent Ford secondary?

A. Yes, sir.

Q. And what, in you opinion, is the importance of that in this situation?

A. Well, the Ford financing, it took place here a couple of weeks ago, consisted of two million shares, marketed after hours at $56½, representing therefore $113 million.

My recollection is that somewhere I saw a statement that the books had been closed by the middle of the next day, meaning the whole thing had been sold in a period of a very few so-called business hours as one of these twilight offerings, meaning after the stock exchange had closed.

It was a very successful issue, and if Ford can sell that—there are two or three things I would like to mention.

First, this was only a small amount of a total issue. The Ford Foundation has about 65 per cent, or did have before the sale, of the total Ford stock, and this represented two or three per cent of the total Ford stock. It is my understand-

ing that the Ford Foundation has plans to liquidate this sometime when it is to its advantage to diversify its portfolio, but no particular time has been set.

Therefore, this huge amount of something over 30 million shares hangs over like the Sword of Damocles in the market. People know that more is to come, but just when we don't know. That is one important factor. Yet in spite of that, people jumped in and bought it.

Secondly, I have the opinion, and it is not mine alone, that Ford Motor Company, while it has been a very successful enterprise since it was formed in 1903 and reformed in 1919, does not have the credit standing of General Motors. It is not nearly as diversified. There is considerable doubt as to its ability to compete as successfully as General Motors, and it has not the same quality or credit standing, though good, of General Motors.

[fol. 2878] If the Ford people can sell $113 million in a few hours, it is my opinion that General Motors can do equally as well. In fact, it is my opinion it can do substantially more.

Q. Have you also considered the recent A&P secondary?

A. Yes.

Q. What was your consideration of that?

A. Well, A&P is a company which sell various household foods, and has been a long successful company. It is fairly closely held by the Hartford interest, and now for family reasons they wish to diversify or to liquidate.

Much of it is in some sort of a foundation, charitable in character, I believe.

They brought out the issue here, 1,800,000 shares at about $44 a share, and that was underwritten by Morgan Stanley, and it was their belief that that was a fair price and they could sell it in that quantity.

I think that is a strong indication of what can be done in the sale of General Motors.

Q. Have you considered the amount of A&P stock which is now overhanging the market?

A. Well, I know there is a very substantial amount. I have the prospectus here if you would like me to look it up.

Q. Will you check that, please, and see what it is.

Professor Howell, I show you Government Exhibit 674 for identification. Will you refer to that?

A. Well, it has outstanding 21 million shares, of which the Hartford Foundation has 34 per cent and the Hartford family 29 per cent and others 27 per cent, or 14 million shares or about two-thirds is in the hands of the Foundation as a possible overhang in the market.

[fol. 2879] Q. In your opinion, does the overhang which you refer to with respect to both Ford and A&P have a significant effect on the market price of those stocks?

A. Why, I must confess that I haven't checked the A&P price. The Ford price shot up to 59¼, I think, last night, which is up from 56½ when it was offered. It didn't appear that the offering price was, well, it doesn't appear to me that it is very depressed.

Q. Have you also considered, Professor Howell, the current demand for common stocks from various sources?

A. Yes.

Q. In your opinion, is there a shortage of common stock in view of the current demand?

A. Well, one can always say that supply equals demand, or that one equals the other, and that therefore there is no shortage. But, let us take a look at a few facts, which have their limitations, but let's see what they seem to be.

The net increase in equities, preferred and common, as computed by SEC sources, was, in 1958, 3.6 billion dollars.

The demand for money put into common stocks by pension funds in 1958, while definitive figures won't be out for another couple of months, as preliminary estimated, it is about one billion, two hundred thousand dollars.

It is also estimated that the net, and this is important because the gross figure is highly misleading, the net input into common stocks, new money, by investment companies as distinguished from pension funds, approaches one billion dollars.

Adding the two together, then, you get 2.2 billion, and if you subtract that from the amount of common stock financing done last year, you get in the amount of 1.4 billion for the rest of the purchasers.

[fol. 2880] When we remember that these other purchasers include many other kinds, types and sizes of buyers —institutions who run trust accounts for wealthy people with money, wealthy people themselves that own the vast majority of common stocks, other kinds of institutions besides pension funds and investment companies which put

money into the market—you find that there is very little left of a pie for other people.

That has been one, in my humble opinion as an economist of capital markets, of the driving forces behind the rise in the capital markets of recent periods. Stocks have been driven up because there has been, you might say, a rate of inflation, a flight of the dollar, for some people at least, and as a result of a number of forces, the demand for common stocks has been good.

I don't think I need to labor the point. The market has gone up, it is obvious. I believe the earnings price ratio for General Motors during the last, say, ten years, has varied between 12 and 23 times the current earnings. At the present time it is selling at the high in terms of a price earnings ratio.

Some stocks are selling for 50 times earnings due the terrific pressure to buy common stocks and money available for the purchase.

Q. Have you considered, sir, whether there is any overhanging effect on the market price of AT&T stock from the financing it has done or may do?

A. Well, over the years I have made a rather comprehensive study of American Telephone & Telegraph Company. Let me recapitulate some of the high points in that.

It is the largest company in the world, and it has now [fol. 2881] some 70 million shares outstanding, with a book value of $157.27 as of the end of the year.

It has expanded enormously in the postwar period in terms of whatever you want to say, number of people, number of employees, number of telephones.

Let us look at the finances. It had about three billion in the capital stock account ten years ago, and now has about nine billions in that account. In other words, it has increased in ten years by 200 per cent. All without compounding it, just dividing by 10, you get an increase of 20 per cent a year.

It has done this by primarily the method of convertible bonds, and at the present time we have a substantial amount of convertible bonds overhanging the market. Those bonds, except for a temporary lull, overhanging the market when they did their stock rights financing about two and a half years ago.

Any informed investor in AT&T knows that while there

may be no overhang in the sense of a foundation saying that it is going to sell in a period of time, Telephone has advertised that they plan to offer service to everybody, and that their program for expansion is, roughly, two billion a year, and it requires money, and that requires more securities.

That, to any investor, is an overhang which he knows is coming, bringing more stock onto the market and not just a little piddling amount. The average amount, as they have stated, let's see, 6 billion 500 million, and in a ten-year period that is 650 million per year on an average, a 20 per cent increase, which is a huge amount. Yet, the market has taken it.

It bonds are not the quality of General Motors. Its [fol. 2882] bonds are rated only AA. They are debentures. Some of the underlying companies, of course, have AAA ratings.

I would not say that the credit of General Motors was better than AT&T despite Moody's change in ratings; the company certainly is a high quality and certainly well-regarded by investors, but there is, to answer specifically your question, a terrific future overhang of coming financing, both bonds and stock.

Q. Have you considered the electric ultility industry in forming your opinion with respect to the effect of overhang on the market?

A. I have.

Q. And what factors did you consider in that respect?

Mr. Burnham: I object to the materiality of utilities in this. We have had two or three Government witnesses who have said utilities were entirely different from industrial stocks. I don't know who he is rebutting now.

The Court: Sustain the objection.

By Mr. Reycraft:

Q. Have you considered, Professor Howell, the fungibility of stocks in view of the current demand for stocks?

A. Yes.

Q. What has your study shown in this respect?

A. Well, fungibility is a fairly technical phrase used in law as meaning complete substitutability. It is used particu-

larly down at the end of LaSalle Street in trading on the wheat market, when you go into a similar grade.

Stocks themselves are highly individualistic outside of the shares of a particular company. One share or one numbered certificate is substitutable for another within a [fol. 2883] particular company. But between companies they are highly individualistic.

But the thing we are talking about here is capital and capital knows no barriers. It flows toward one particular objective; that is income, earnings, dividends, and capital appreciation wherever you can find it—utilities, railroads of industrials.

Now, here the question is, do we have an elasticity of demand for capital or for stocks? It is my opinion—well, strike that.

The problem and job of the financial fraternity, particularly security analysts in insurance companies, in brokerage houses, investment companies running trust accounts, and investment counsel, is to constantly evaluate, analyze and weigh relative opportunities.

When any particular company gets out of line they either sell, if that is deemed appropriate, or they buy, if it is below the market. In a free, open and competitive market place, as we try to maintain in a competitive society under the leadership of the Securities and Exchange Commission, the price shall be uninfluenced by manipulative activities, particularly as indicated by Chairman Gadsby in today's New York Times.

So when you have an equilibrium, and then you dump on the market unsponsored, unmanaged, and you might say, undigested securities, which upset the equilibrium of supply and demand for a time, you will find that great publicity will be given to that by the stock exchange ticker, and newspapers. The analysts are constantly being informed as to what happens in price. They have already made their other analyses, and if it gets out of line very much, forces are set up to put the equilibrium back into [fol. 2884] place. Buying will come in, and, I might say, support the market.

The purpose is not to support the market. The purpose is to avail themselves of investment opportunities. So having them come into the market will prevent the market from, you might say, going to pot or being depressed.

If a huge amount unsupervised, undigested stock is put into a disorderly market, then you might get something else, but that is not my impression of the Government's plan for liquidating 19 million shares of General Motors—that it should be in any disorderly, unsupervised fashion. Consequently, in beginning——

Q. Did you examine——

Mr. Tierney: I object to the interruption. Let the witness finish his answer.

The Court: Finish your answer.

Marketability is the ability to sell a substantial amount fairly quickly without much of a break in price. Now, let's look at some of the things that make for marketability and make for elasticity of demand for a particular company's securities. Some of them I mentioned but let me recapitulate.

The company is well known, listed on the Stock Exchange, well advertised, well regarded; in other words, a company which is watched constantly, daily, hourly, minute by minute by the people around the post; a company which is considered to be blue chip or very blue, a company with a long record of earnings and dividends, a company which showed tremendous growth possibilities.

It is my recollection that about the end of '46 or early '47 General Motors sold for about $45 a share. They have [fol. 2885] split it twice, times three or six, which means that the quotation which was extant a few days ago of about $45 has gone up about 600 per cent.

With people watching a growth situation like that you get a demand, an elasticity for demand, a case of a security which has a large volume of transactions that makes for elasticity.

There is a great deal of trading interest in it. I would like to make one comment. We always seem to worry about the marketing of a large block of stock. Absent the marketing of any block of stock, we know, as J. P. Morgan said many years ago—even though he cannot be cross examined on it—it is a legend that stocks will fluctuate, "Young man, the stocks will continue to fluctuate."

That is as true today as when he allegedly uttered it 50 years ago.

Q. What is your opinion with respect to the ability of

the market to absorb the 20 million shares of General Motors over the ten-year period?

A. Well, that it can be done very successfully.

Q. Without substantial impact on the market price?

A. It can be arranged so it can be done without substantial impact on the market price. The plan is feasible.

Mr. Reycraft: That is all.

Cross-examination.

By Mr. Cox:

Q. Mr. Howell, are you a member of the Bar?

A. No, sir. I just took a course from Professor Frankfurter one time just to see what he would be like.

Q. All right. Perhaps we can detect his influence. Are you a public accountant?

A. No, sir. I am a member of the American Account- [fol. 2886] ing Association, and I have taught accounting, but I am not a CPA.

Q. Do you, in the course of the business, which I take it you now conduct in New York under the name of Paul Howell Associates, give tax advice to your clients?

A. No, sir.

Q. Do you advise them on tax matters?

A. The same answer, sir.

Q. "No?" May I ask, Professor Howell, whether you have ever been associated with a firm of investment bankers; if you have ever worked with a firm of investment bankers?

A. I have been invited to, but I never have accepted.

Q. Have you ever worked in a brokerage house, or been employed by a brokerage house?

A. Well, I did not make any distinction between those two. I might add, Mr.——

Q. Cox.

A. (Continuing)—Mr. Cox. I am sorry, sir,—that I was the guest of—well, I worked for the New York Stock Exchange one time.

Q. I have noticed here that you did some kind of a study for them, didn't you?

A. I consulted with the New York Stock Exchange on a census of shareholders. I was also a guest of the Stock

Exchange and associated investment bankers and brokers as a summer fellowship in the summer of 1948. I spent about two months in the back offices.

I remember very appreciatively of the courtesies extended to me in showing me how they operated things from both sides of the street, have been in the SEC and the other side for a substantial length of time, as well as the other side of the lecture chair.

Q. I have not had time to examine very carefully the [fol. 2887] statement of your professional experience and your writing. Could you tell me, Professor, whether you have ever done any writing on the problems involved in marketing securities, particularly common stocks? Have you written any articles on that?

A. Well, I have a few pamphlets here. One of them has my personal notes on it, but——

Q. Well, just tell me what it is, then.

A. I have one pamphlet here, "Competition in the Capital Markets," which I wrote, and it was published in the Harvard Business Review.

Q. What is the substance or theme of that article?

A. It was my analysis, or you might say appreciation, of the investment banking trial which took place over a period of several years before Judge Medina.

Q. Oh, I see.

Investment banking? The anti-trust case?

A. Was I responsive to your question?

Q. Yes. That is what I asked. This was an article written about that case?

A. Yes, sir.

Q. What is the other article?

A. Well, the other article I have is more recent. It is "Common Stocks and Pension Funds Investing," also in the Harvard Business Review. I think the title is fairly self-explanatory.

Q. That was directed to the investment policies of pension funds?

A. Yes, that is correct. Also some suggestions. I have other pamphlets which were published in the Commercial & Financial Chronicle called "The High Cost of—" well, these are listed in my setup.

Q. Are they directed or devoted largely to the investment policies of pension funds?

A. That is correct.

[fol. 2888] Q. And related subjects?

A. Yes.

Q. And that is what your study—that is one aspect of your study for the Twentieth Century Fund, I take it?

A. I might add, Mr. Cox, that my first answer was incomplete to you. You asked me what studies. I do not think you put it in the sigular, or did you?

Q. I am not sure.

A. Well, anyway, do you want me to——

Q. Yes, will you complete your answer any way you like?

A. I have made other studies. My first job in the SEC—when I came there I was somewhat of a junior—was to work with other staff members on preparation of an article—well, it wasn't an article, it was a study, which was not published, and then subsequently another study which was published.

The one which was published was called, "An Analysis of Competitive Conditions and Maintenance of Arm's-Length Bargaining in the Sale and Distribution of Securities of Registered Public Utility Holding Companies and Their Subsidiaries."

Q. Was that in connection with the SEC regulation or proposed regulation to require that the sale of securities of registered holding companies be by sealed competitive bids?

A. That became eventually Rule U-50.

Q. Rule U-50?

A. Then there was—let's see, I do not know whether you would really call it a study of investment bankers and brokers, but my testimony before the Civil Aeronautics Board was published by the Civil Aeronautics Board as a formal document.

That was my analysis of the cost of attracting capital for the airline industry and——

[fol. 2889] Q. In that connection—I am sorry, I did not mean to interrupt you.

A. (Continuing) That was in connection with the airline industry. The document was about 100 pages, if you just want an idea of physical size.

Q. Was that in connection with the general passenger fare investigation?

A. That is correct, Mr. Cox.

Q. Professor Howell, I take it from what you told me about your experience and qualifications that you never have personally participated in an underwriting and offering of securities yourself?

A. That is correct, Mr. Cox.

Q. Or had any responsibility for such an enterprise personally?

A. (Witness shaking head.)

Q. The answer is no?

A. No.

Q. Do you recall that at the beginning of your direct testimony Mr. Reycraft asked you for your opinion about some estimates that had been made by witnesses in this case with respect to the amount of General Motors stock that might be sold by stockholders of du Pont because of tax problems that they faced on a distribution? Do you remember being asked about that?

A. Yes.

Q. And my recollection of your testimony was that you said you thought that those estimates were exaggerated because people would find ways of avoiding or evading the taxes that would be imposed; is that an accurate summary of your testimony?

A. Well, if there is no invidious distinction in the word "evading." If there is then it is not an accurate summary.

Q. Well, I did not intend any invidious distinction. Let's say avoid taxes.

A. It was to my great surprise, as I, you might say scanned the proceedings, that there was nothing in the record of what ingenious tax counsel have in so many situations devised to minimize or reduce or defer taxes.

[fol. 2890] Q. By the way, Professor Howell, when did you first begin studying the record in this case?

A. Well, I was first invited to participate in the case, oh, I guess about a month ago, and my active or intensive participation was I suppose about two weeks ago, two and a half weeks ago, something like that.

Q. Was that when you began to read the transcript and the exhibits, two weeks ago?

A. That was when I began to do my work. The exhibits, and that sort of thing were—well, yes, some of them. Certainly they were not all available at that time.

Q. Did you understand at that time that you were going to testify for the Government in its rebuttal case?

A. I was not assured by anybody that I would testify until last night.

Q. But in this two and a half week interval you have been getting ready to testify?

A. I had been trying my utmost to digest a huge amount of material, exhibits of all sides and testimony.

Q. Now, let me revert to the line of question that I was asking you when my attention was diverted. Those questions were directed to your answer as to the opportunities for ingenious tax counsel to find ways of avoiding the tax impact of the distribution of General Motors shares to du Pont stockholders.

What assumption did you make as to the way those shares would be taxed under the Internal Revenue Code when they were distributed to the shareholders of du Pont?

A. Well, basically I made no assumptions. I gave consideration to a number of things, but through counsel's adroit objections I was not able to place in the proper setting the thing which I was really trying to present, [fol. 2891] which was the amount of stock which would come onto the market and the ability of the market to handle that in its proper perspective; of what has been and what could be taken by the Bonus Plan, the Stock Purchase Plan, by the Savings Plan, by pension funds, by investment bankers, investment trust companies; as to just how much they could absorb and its relationship to the 19 million shares.

What I took as a point of departure was what du Pont said would be the tax selling in their own annual report, of about fifty-eight million if you put it in a ten-year period, or about 1.2 million shares at most.

So when I said to myself, "Here is what we have got, something to work with, one million, nine, coming from the trustee, one million, two, coming from sale of General Motors stock, plus perhaps another million coming off the line for expansion of General Motors themselves. Now, against that, what will the market take? What can it take?"

Taking into consideration what GM could do with the sale of a stock dividend, with the distribution—the purchase of some of this stock and the distribution, of it as

a stock dividend to its own stockholders, which could be made, I am advised, tax exempt——

Q. Professor Howell——

A. (Continuing)—as common, uncommon——

Mr. Reycraft: Let him answer the question.

Mr. Cox: No, I won't. May I have my question to the witness read?

(Question read by reporter as follows:

"Q. What assumption did you make as to the way those shares would be taxed under the Internal Revenue Code when they were distributed to the shareholders of du Pont?")

[fol. 2892] Mr. Cox: Now will the reporter read the answer?

(Answer read.)

Mr. Cox: I move to strike as non-responsive everything after, "I made no assumptions."

The Court: Sustained.

By Mr. Cox:

Q. Professor Howell, I think you would like to get away from the witness stand as soon as you can, wouldn't you? If you would just answer my questions.

A. I am in no hurry, sir.

Q. I was afraid of that. Well, I entreat you to consider that possibly some of the rest of us are.

A. I beg your pardon, sir. I think my answer——

Q. Let me put a question to you. That may make it easier. Did you consider whether the distribution of General Motors stock to the du Pont stockholders would be taxed on an income basis or a capital gains basis?

A. I answered your earlier question but we lost the impact of it. I said that we had 1.2 million shares. I based that on the assumption that the General Motors stock would be liquidated.

Q. Well, did you assume—what I am trying to find out, Professor Howell, is did you assume that it would be taxed to the stockholders of du Pont, the General Motors shares,

as ordinary income, or that they d be taxed on a capital gains basis?

If you do not understand the question, you may say so.

A. If I am not responsive you will say so.

Q. Yes.

A. I tried to find a figure which I could wrestle with market-wise, as to how much stock would be here and [fol. 2893] I took the fifty-eight million which was in the du Pont's annual report and said to myself, "How much General Motors stock would have to be sold to raise fifty-eight million a year?" and I figured——

Q. Well, I am not sure yet—perhaps I will try it once more. Do you understand the difference between a tax which is imposed on the regular income rate and a tax which is imposed on the capital gains basis?

A. Oh, yes, yes, yes.

Q. Now, if you were a shareholder of du Pont and you received on distribution a share of General Motors, would you assume that you would be taxed on the market value of General Motors shares as regular income or that you would pay a capital gains tax?

A. Well, I tried to—I did not assume anything. What I assumed——

Q. All right.

A. That is not correct.

Q. All right.

A. What I did was to take the figure which was set forth and say, "How much General Motors must we sell in order to raise that much money?"

Q. All right. Now, you have talked about the devices that an astute tax counsel might use to avoid these taxes. What devices did you have in mind?

A. I did not have any—well, I used that only as an idea that it would be something less than 1.2 million shares, that it would not be the full amount, that nothing had been said about somehow these would be less; but I took the top figure, put in the books, with the frame of reference as to how many shares would go into the market and how much would have to be taken care of.

Q. What devices did you have in mind, Professor Howell?

A. I am not a tax man, but, well, there are such [fol. 2894] thing as—well, one of the things I did have in

mind very definitely was maybe they did not have to sell General Motors, maybe they would pay cash.

I have in my notes, if you wish to see, an idea maybe they would not sell General Motors, maybe they would sell part of the du Pont. The question is how much General Motors would come onto the market. And, of course——

Q. If you sold some other stock and kept the General Motors stock, you would still pay ordinary income tax on the market value of General Motors stock?

A. I take that as——

Q. Well, let me ask you again, apart from selling some other stock, what devices or plans did you have in mind that a stockholder might follow to avoid the impact of the taxes that would be imposed by this distribution?

A. Well, sir. I am sure that ingenious people, tax people, can cook up some devices to do something, to defer taxes and such. I have no professional knowledge.

Q. Did you have any devices in mind?

A. Well, I—such things as holding companies, and that sort of thing, which I have just a vague understanding of in respect to the higher echelon of tax law and accounting practice.

Q. What is your understanding about how a holding company could be used in this particular situation to avoid the impact of the taxes?

A. I do not hold myself out as a tax man, Mr. Cox. My question was, "How many shares are we going to throw on the market as the top notch figure?"

Q. But in approaching that problem, I take it you assumed that there would be some devices which could be employed?

A. I assumed as a practical matter there would be something less than 1.2 million.

[fol. 2895] Q. You cannot tell us now any more about those devices?

A. No, I have not testified on them. All I did say was to reach some basic starting point as to how many shares we are going to put on the market, that they had to be taken care of in addition to the nineteen million.

Q. Can you tell us anything more at all than you have so far about the devices that an astute tax counsel might

use to avoid the tax? You mentioned a personal holding company. Do you think of anything else?

A. Well, now, I have been teaching and I have been occupying a room with a learned tax man, and we have things vaguely. I am not qualified to testify on it. I can't testify on any hearsay, and things like that.

Mr. Reycraft: He said several times, your Honor, that he is not a tax expert. I think we have established that.

By the Witness:

A. (Continuing) I have told you the point of departure.

By Mr. Cox:

Q. I am glad to have that concession.

I didn't quite understand this last answer. You say you shared a room with someone?

A. When I was teaching at New York University, I shared a room with Mr. Holsman, who is a very distinguished tax accountant and practitioner, and has written several books.

Q. Did you talk to Mr. Holsman about this problem?

A. Not about this problem; but very generously at one time he allowed me the courtesy, without paying tuition, to attend his course in corporate reorganization.

[fol. 2896] Q. Did you discuss this tax problem with Mr. McCullough, who testified here this morning?

A. I listened in. I don't know—I did discuss one point. I asked him one point with respect to the taxability of a dividend by GM in its own stock, if it reacquired this, and was told that it could pay out the reacquired stock—that is, cancel and pay out a stock dividend, as dividend on dividend in lieu of the regular dividend—that was feasible. Then I figured if you took a quarter dividend, fifty cents, you would probably get rid of two million shares that way, which would be tax exempt to the holders of it.

Q. Are you finished?

A. You asked me what I asked Mr. McCullough?

Q. No. I asked you whether you had talked with him.

A. That is what I talked to him about.

Mr. Cox: May we have the answer read?

(Record read.)

Mr. Cox: I move to strike all the testimony after where he said he talked to him about "one point."

The Court: Sustained.

By Mr. Cox:

Q. Professor Howell, let me turn to a somewhat different subject.

In discussing the credit standing of General Motors, I got the impression that you thought that there was some resemblance between General Motors and a public utility company, is that right?

A. Well, I think that is pushing it a little far, sir. I think that is exaggerated a little bit.

Q. There are very distinct differences, are there not, between General Motors and a public utility company?

A. I can find some very distinct differences—that is legally.

[fol. 2897] Q. And economically?

A. You interrupted me, sir. And economically.

Q. What are the chief economic differences between a company like General Motors and a public utility company?

A. Well, generally a public utility company has an economic as well as a legal monopoly in a particular area; and, as far as I know, outside of perhaps some patents, General Motors has virtually no economic or legal area enclosed to itself. Of course they have patents, I suppose.

Q. That is an important economic difference, I take it, between a company like General Motors and a public utility company?

A. And Commonwealth Edison, yes.

But the point I made was that transportation itself was an absolute necessity and it was serving this demand; and in evaluating any industry you need to consider the quality and character of the demand behind it. The demand is for necessity; it is serving a necessity. That is the frame of reference in which I used it.

Q. Is a public utility more or less of a cyclical industry than a company like General Motors?

A. Well, it is usually considered that a public utility is a fairly stable enterprise. You find a number of them that don't have as good an earnings record, or as long, or with the growth situation that General Motors has. A number

of them don't have earning records going back to 1921. But generally they are considered to be less cyclical.

Q. Of course, a public utility, by reason of rate regulations, has almost a guaranteed rate of return, do they not?

A. If you were listening to some of the utility counsel, you wouldn't think so.

Q. But there is at least a safeguard against fixing rates below a constitutional level?

[fol. 2898] You have testified in rate proceedings, haven't you?

A. You have got two questions there. What will you have?

Q. Let us take the second one first.

A. May I have the question, please?

Q. The question is whether you have testified in rate proceedings?

A. Is this a restatement of the other question?

Q. I am taking the second part of the question first, Professor Howell. I am asking you whether you have testified in rate proceedings?

A. Yes, sir.

Q. And in those proceedings, of course, one of the issues was what restriction there is on the power of a public agency to fix rates. Are you conscious of that?

A. In general, they have power, delegated either by the legislature or the constitution of the state, or by Congress, to fix and determine rates.

Q. Subject to the constitutional prohibition against fixing rates as confiscatory?

A. If I may——

Q. Are you aware of that?

A. If I may put words in their mouths—subject to provisions, by review by the courts, to check any so-called confiscation.

Q. Now, do you regard General Motors as a growth stock?

A. Well, it seems to me that something that has grown 600 per cent in a decade is pretty strong evidence of it.

Q. You think it is a growth stock so far as the future is concerned?

A. I would be surprised that it grew at that rate compounded for the next decade. I would be surprised.

[fol. 2899] Q. Do you regard it as growth stock for the future, Mr. Howell?

A. The term is always relative; but as a company which is not contrasted with some small electronics company or some other small company which might have mushroom growth, I think you would say that it was a growth company, which however is approaching a maturity; it is not in a dynamic stage where it will grow, double itself every six months, or something like some of the smaller electronic companies are doing today in growth. But those are pretty mushroom affairs. I think at length GM has demonstrated good management, which is accomplished to meet long-term vicissitudes and competition, and patents, and that sort of thing.

Q. Do you regard General Motors stock as growth stock for the future, Mr. Howell? I am still trying to get an answer.

Mr. Reycraft: If you will tell him what you are comparing it to, Mr. Cox.

By Mr. Cox:

Q. I am not comparing anything.

A. As an investment company of maturity, yes.

Q. Have you ever heard of the Massachusetts Investment Trust?

A. MIT? Yes, sir.

Q. Are you aware that Mr. Moses of MIT testified in this case?

A. I am aware of it.

Q. Did you read his testimony?

A. No, sir, I didn't get around to it.

Q. Did Government counsel ever call your attention to [fol. 2900] any passage in his testimony in which he stated what the attitude of Massachusetts Investors Trust was with respect to the growth possibilities of General Motors?

I just want to know whether they called your attention to it.

A. Somewhere in the background of my mind it seems to pass through; I got the impression that he didn't think much of it.

Q. Have you ever heard of the America Fore group of insurance companies, Professor?

A. Is that that outfit out here about two blocks over, across the street?

Q. No, I think this outfit is in New York.

A. I thought I saw "America Fore" back of the Union Station.

No. No, I know it is an insurance outfit, but I am not familiar with it.

Q. Are you aware that a Mr. Herd testified in this proceeding as an official of that group of insurance companies?

A. I am aware that somebody from the America Fore testified; that is all.

Q. Did counsel for the Government ever call your attention to any passage in Mr. Herd's testimony, in which he made statements with respect to his attitude towards General Motors as a growth stock?

A. No, sir.

Q. In connection with one of the stock offerings, the secondary offerings—the Ford offering, I think you described it as a "twilight offering." What did you mean by that?

A. It is sometimes referred to as a "dusk to drawn offering"—a secondary which is offered after the market closes.

Q. Most of them are, aren't they?

A. Those are mostly twilight offerings.

[fol. 2901] Q. I wondered if there was any sinister connotation of extraordinary significance.

A. It is slang of the streets, sir.

Q. Now you have, I take it, made a study of that Ford offering?

A. Well, not an intensive one.

Q. Can you tell me what the closing price was on the day before the registration statement was filed?

A. Not when the registration statement was filed; only the day before the——

The answer is no. No.

Q. Can you tell me what happened to the price in the three days that followed the filing of the registration statement?

A. No, sir.

Q. You also testified about the secondary offering of the stock of the Great Atlantic & Pacific Tea Company, the A&P stock. Have you made a study of that secondary offering?

A. Nothing except what is in the prospectus.

Q. Do you know anything about the movement of prices before and during that offering?

A. I do not.

Q. You don't know anything about that?

A. I can't testify on it.

Q. Did you make any study of the secondary offering of stock of General Motors that was made by the Sloan Foundation?

A. Not of market prices.

Q. Did you make any study at all of that secondary?

A. I looked at it, particularly with respect to the underwriting spread; and in my recollection the underwriting spread was extremedy small.

[fol. 2902] Q. Do you remember what it was in dollars?

A. In my recollection it was $1.35.

Q. Do you know what the underwriting spread was in the Ford offering?

A. I have got it right here.

My notes say it is two bucks.

Q. Do you know what it was in the A&P offering?

A. A dollar sixty, or 3.6 per cent.

Q. Did you make any study of the first offering of Ford stock, the offering that took place three years ago?

A. February 8, 1955?

Q. Yes.

A. Well, I read the prospectus rather carefully.

Q. Did you make any study of the movement of Ford prices after that offering?

A. I think it was openly notorious in the newspapers.

Did you say "Ford," sir?

Q. Yes.

A. No. Let us back up. I thought you were questioning me about the offering of General Motors, and when I said February 8, 1955, that was entirely erroneous.

Q. I am talking about the first large Ford offering. I think you were, too. At least, that is what I meant to ask you.

A. The date wasn't February 8th. It was 1956 sometime.

Q. 1956, yes. About three years ago.

A. I don't know if I made a study. I observed it rather keenly at the time. There was a terrific amount of interest in the proposed offering, and I remember Mr. Ford making some comment that people shouldn't go overboard at the time on it; and of course the market went up to about 70, and it was over-priced basically because people were too eager just to get some of it; they thought they were going to get rich like Henry, I guess.

[fol. 2903] Anyway, the price went down very substantially; then Ford had a poor year, and it went down to somewhere in the middle thirties.

Q. Do you know what the spread was on that offering?

A. The Ford first offering? No, I don't.

Wait a minute. My recollection is that it was somewhere around three per cent; it was very substantially less than five per cent.

Q. In your direct testimony, Professor Howell, you spoke in reference to Ford stock and referred to the overhang of the stock owned by the Foundation. Do you regard the stock owned by the Ford Foundation as overhanging the market?

A. Well, yes, yes.

Q. What is your understanding as to whether the Ford Foundation is under any legal compulsion to sell any of that stock? Do you know whether they are?

A. Well, if you will permit me to answer, my understanding is that they are under no legal compulsion; it is an economic one.

Q. No legal compulsion?

A. That is my understanding. At least as I read the report of the Ford Foundation and the Treasury's section, there was nothing in there that indicated it. I gathered from something in there they wanted to have a diversified portfolio.

Q. And you also made a reference to the overhang on the market resulting from the ownership of A&P stock by members of the Hartford family and by the Hartford Foundation.

Do you understand that members of the Hartford family or the Hartford Foundation are under any compulsion to sell an more A&P stock—legal compulsion?

A. I have no knowledge of any legal compulsion.

[fol. 2904] Q. As far as you are concerned, they can keep that stock as long as they like?

A. Well, there is a legal compulsion, of course, if somebody dies that is in the Foundation, they might have to do something about it.

Q. That is because they need money?

A. Estate tax.

Q. Let me ask you this, Professor Howell. I gathered from your direct testimony that, in your opinion, the recent Ford offering has had no depressing impact whatsoever on the market price of Ford stock.

Is that a correct statement of your opinion?

A. Well, I would, speaking generally, say it has had a temporary, slight depressant. I haven't followed, as I said, the figures, but the fact that it rebounded back so much would indicate that the depressant was of minor character.

Q. What I am trying to find out, Professor Howell, is whether in your opinion today the common stock of the Ford Company is selling at just as high a price as it would if that secondary offering of two million shares had never been made?

A. If investment bankers accomplish the objective which they are supposed to do, namely, which is to lay it away and to place it with investment people, and not let it bounce back on the market, and to create demand by going out and beating the investment pushers, it would soon become "digested," and the equilibrium forces of supply and demand would push it back to where it was before, in a competitive, orderly market.

The earnings of the company haven't changed, and this increment of stock is not enough to change the over-all [fol. 2905] supply and demand for capital funds, so that the earnings price ratio ought to be about the same when it gets digested. The function of the investment bankers is to see that there are orderly marketing processes. To the extent that they are successful in doing that, any depressant price is temporary to the extent that it turns out to be a box job, but if they misjudge the market by other factors, it would be quite different.

Q. Do I understand from that answer that you think the price of the common stock of the Ford Company today is just as high as it would be if the secondary offering of two million shares had never been made?

That was my question.

A. It is awfully speculative to say. It could be a quarter of a point; it could be a point. On the other hand, I have known financing which, because of the very active management of selling securities, is considered a bullish factor so that the stock went up higher than it was ever before.

Q. What stock was that, Professor Howell? Do you have a stock in mind?

A. No, no particular stock in mind; but it frequently is announced that they are going to sell stock, and the stock goes up.

Mr. Cox: May it please the Court, do you wish me to continue?

The Court: Unless it is going to be very brief; otherwise we will adjourn.

Mr. Cox: I think perhaps it won't be that brief, your Honor.

I think before we adjourn that we would like to look at the papers that the witness has used in testifying from the stand.

[fol. 2906-2907] Mr. Reycraft: We have no objection.

The Court: Do you expect to complete your case tomorrow, Mr. Reycraft?

Mr. Reycraft: We do, your Honor, yes.

The Court: Very well. We will adjourn at this time.

(Whereupon an adjournment was taken in the above-entitled cause until 10:00 o'clock a.m. of Wednesday, April 8, 1959.)

[fol. 2908]

**Transcript of Proceedings of April 8, 1959**

The Clerk: Case on trial.
The Court: Counsel may proceed.

---

PAUL HOWELL, a witness called on behalf of the Government in rebuttal, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-examination—(Continued)

By Mr. Cox:

Q. Professor Howell, have you read the testimony of Mr. John J. Scanlon in this case?

A. Yes.

Q. Who is Mr. Scanlon?

A. He is now vice president of A. T. & T.

Q. Did you read the passage in his testimony in which he discussed whether the repeated financing operations by A. T. & T. has any effect on the market price of its common stock?

A. I probably did. I could not testify as to what he exactly said.

Q. You do not recall the substance of that testimony?

A. No, sir.

Q. Mr. Howell, can you give us the names of some of the larger corporate pension funds in the United States?

A. Well, the American Telephone & Telegraph Company is the largest, two billion eight. The next one, United States Steel, which is about a billion dollars. The next one, I think, is General Motors—no, General Electric, which is about eight hundred fifty million, probably a little more.

I think the next one is General Motors, which was put in by Clarence Stanley. I don't recall the total. I think it is six hundred seventy-seven million dollars, which is what I call off the cuff. Those are some of the largest ones.

Q. Is Sears Roebuck one of the largest?

[fol. 2909] A. Sears Roebuck is a slightly different type. It is a profit-sharing job, as compared with a straight pension one, and that has total assets of about a billion dollars.

Q. Now, do you know how many shares of common stock of General Motors are now owned by any of these pension trust funds that you have mentioned?

A. No.

Q. Can you tell us how many shares of common stock——

A. Well, I think it is a matter of record that I mentioned General Motors' pension fund, and in this proceeding there is a statement as to how much General Motors pension fund owns of General Motors. I could dig it out, I think.

Q. Can you tell us——

A. It is not much.

Q. Sorry?

A. It is not a great deal.

Q. Do you know, for example, how many shares of the common stock of General Motors the Sears Roebuck's fund has purchased in the last three years?

A. I know there is quite a bit in the portfolio, but I could not say how many shares of GM is in it.

Q. Well, do you know how many shares of GM that portfolio has in it?

A. I just said no.

Q. Do you know how many shares of the common stock of General Motors has been bought by any of the pension funds you have mentioned in the past three years?

A. Well, I have my notes at home how many shares G.M.—rather, American Tel. & Tel. has of G.M., but I could not give it to you here.

Q. Do you now recall how many of the witnesses who were called by the defendants in this proceeding testified with respect to purchases of G.M. stock by pension funds?

A. Well, you mentioned the one from MIT yesterday, which I did not read. Mr. Kunhardt——

[fol. 2910] Q. Kunhardt?

A. (Continuing)—mentioned he had some. I do not recall how many. I do not think he gave how many in these 217 trusts. I do not recall that John Scanlon mentioned how much was held. Mr. Stanley did mention in his testimony something about holdings in his own coordinated group.

Mr. Murray did not testify to any particular fund, but in general, as I recollect.

Q. Do you regard Mr. Murray as a witness called by the defendants in this case?

A. I guess he was called by the Government, sir.

Q. I understood you to say yesterday that you had read extracts from the testimony of Mr. Kunhardt, is that correct?

A. That is right.

Q. Based on your recollection of those extracts, can you tell us what the substance of Mr. Kunhardt's testimony was with respect to the purchases of G.M. stock by the pension funds that the Guaranty Trust administers?

A. Well, in my recollection something very vivid is that he was buying on a yield basis, and they were looking for something around 5¼ per cent, and to be particularly attractive to them they would look for a purchase at current dividend rate of something between about 40, and if it was 38, as I interpreted it, they would be very active buyers.

Q. Let me, if you please, Professor Howell, read you a passage from Mr. Kunhardt's testimony, which appears on page 2092 of the printed transcript. I will ask you whether this is the extract, or one of the extracts to which you just referred in your answer. The passage reads as follows. Mr. Kunhardt was asked this question:

> "In the event, Mr. Kunhardt, that this Court were to adopt the Government's proposal, would the pension [fol. 2911] trust which the Guaranty Trust Company administers be buyers of General Motors stock?
>
> "A. No, sir.
>
> "Q. At no price?
>
> "A. Oh, yes, yes, at a price. Well, let's take the condition as it exists right today. In order for the pension trust to be buyer's of the stock of General Motors, it would have today to sell to produce an income of more than 5 per cent. That would be $40,000 a share, and we would probably be quite heavy buyers, if everything is the way it is today, at $38.00, which is 5¼ per cent.
>
> "Q. Well, until the stock were to drop to the price of 40, or 38, as you have testified, the pension trust would not be significant buyers of General Motors?
>
> "A. That is correct."

Is that one of the extracts to which you referred?

A. Yes, sir.

Q. Do we understand, Professor Howell, that it is your testimony that this statement by Mr. Kunhardt is false or incorrect in any respect?

A. Well, I do not think I gave any statement that he was incorrect, or anything. I do not understand the thrust of your question.

Q. I am asking you whether you intended your testimony at any point yesterday to convey the impression that in your opinion Mr. Kunhardt was not telling the truth about his intentions.

A. Oh, no, no.

Mr. Cox: That is all.

The Court: Any further questions?

Mr. Bushby: No questions on behalf of Christiana.

The Court: Any redirect?

Mr. Reycraft: I do have just one question.

[fol. 2912] Redirect examination.

By Mr. Reycraft:

Q. Professor Howell, do you wish to make any corrections in your direct testimony?

A. Well, I would like to make a little addendum perhaps to something that Mr. Cox asked me yesterday. He asked me if I could remember correctly as to whether I thought that G.M. was a growth stock. "Growth stock" is a word of art and has many or several meanings, depending on who uses it and in what context.

I testified that in my opinion it was a growth stock, and I would like to add a little framework to it, as I thought it over in the evening.

Some people think of growth stock as something where the price goes up, that that makes it a growth stock. Others think of it as something which pays very little dividend, all plowed back earnings, and others think of it as something like a small electronics firm which is burgeoning forth very rapidly. I am thinking of growth stock in relationship to the investment of not what I, as an individual might like to have in huge capital gains, but in relationship to institutional investment, and I am looking at the record, I am looking at two parts of the record—I am looking at the post war and I am looking at the thirty-year record; and

on the basis of that record, I come to the conclusion that it is a very substantial growth stock.

Any company which increases six times or five hundred per cent in the post war period is very good. In my recollection, that is a much better record than MIT shares have done in the post-war period. I haven't looked at MIT for six weeks or so, but that is recollection, that it is a considerably better growth than MIT.

[fol. 2913] Also comment was made with respect to public utilities. I have had a little bit to do with public utilities when I was with the SEC for four years. While GM is not, as I have said, a public utility, it has done better than many public utilities. In fact, until the SEC started its operation under Section 11 of the Holding Company Act, there were very few public utility operating companies which were available for public investment; most of them were holding companies, and some of the holding companies did disastrously badly, to mention only the middle west corporation which grew up in this particular area, Associated Gas and Electric Company.

That's it.

Mr. Reycraft: Thank you.

Recross-Examination

By Mr. Cox:

Q. May I, Professor Howell, direct your attention to the answer that you gave on cross examination yesterday to this question about General Motors stock as growth stock, and I think I asked the question three times. The last time I said, "Do you regard General Motors stock as a growth stock for the future, Mr. Howell? I am still trying to get an answer."

There was an interruption. Then you answered, "As an investment company of maturity, yes."

Are you changing that answer this morning?

A. I am reinforcing it, sir.

Q. You are not changing it?

A. I thought about it more, and I am convinced of the accuracy of my answer as a present day judgment.

[fol. 2914] Q. And your answer is an answer to the question of how you regard it for the future?

A. I use the past as a good judge of the future. That is an important aspect.

I would be surprised if it grew as fast as it did in the postwar period. Everybody was surprised that the electric industry grew as fast as it did. Yet I couldn't come to the conclusion that General Motors was a soundly managed company if it didn't grow. If it became static, I would then say, "Well, management has fallen down."

I think the management is a dynamic and aggressive organization. I don't see any reason why it should have dry rot occur right now; and therefore it would seem to me that they would cope with the future and grow.

Of course, this is true:—If you invested a penny at the time of Caesar, at compound interest, you would have several planets of gold. Compound interest does prove that. And General Motors has paid,—and how much growth can you expect over the next period? It is a mature growth company. It is not going to have the growth that a dinky little electronics company may have at the present time, in percentage, but I look for it to grow and to expand.

Q. In your opinion, will it have growth to the same degree in the next ten years that it has had in the past ten years?

A. As I said, I don't look for it to grow at that rate. No, I don't think so.

Q. Do you think it will grow in the next twenty years at the same rate that it has grown in the past twenty years?

A. Well, it will grow at a lessened rate.

Q. You understand that I am asking you for your opinion as to its growth possibilities in the future?

A. Yes, and I have tried to say that it will grow at a lessening rate in the future.

[fol. 2915] Q. Do you know what percentage of production of sales of cars in this country was represented by General Motors in 1920?

A. I think Henry Ford dominated the market with better than 50 per cent.

That is pretty much off the cuff.

Q. Do you know what percentage General Motors had at that time?

A. General Motors—it would have to have something less, but I don't know.

Q. Do you know what percentage of the market General Motors had in 1930?

A. 1950?

Q. 1930.

A. Oh, 1930. No, sir.

Q. Do you know what percentage of the market it had in 1940?

A. Referring back to 1930, in my recollection it had passed Ford and it stayed ahead of Ford in 1940. The exact percentage, I don't know.

Q. You don't know the exact percentage figure?

A. No, sir.

Q. Do you know what its percentage of the market is today?

A. Well, I think the last figure I have seen is '57, and which I remember, 52 per cent.

Q. Do you expect that percentage figure to increase in the next ten years?

A. There are a number of factors why it will not increase, if you would like me to go into them.

Q. I just want to know whether you think it will increase, Professor Howell?

A. Well, management is in there fighting to sell as many cars as possible in competition with Ford and Chrysler, and production and sales people will try to.

On the other hand, I have heard reputed in the public press that General Motors did not want to run the other people out of business, because they would be afraid of [fol. 2916] another antitrust suit; and therefore you may say they don't want more than the current percentage. But I know that each individual production salesman, is in there working hard to maintain his position.

However, there are other fields in which they may go. They may go into refrigerators, and they may go into diesel locomotives, and other appliances, and such. There is no reason why they can't expand sideways, if not increase their percentage of——

Q. Do you know what their position is in the manufacture and sales of refrigerators at the present time?

A. No, I don't know. On General Electric, I don't know.

Q. Do you expect the market for diesel engines will be greater in the next ten years than it has been in the past ten years?

A. American railroads started dieselizing—oh, around 1940 or maybe a little earlier. The big dieselization movement occurred in the post-war period. Most of the railroads are pretty well dieselized. The remaining amount I would estimate may be ten per cent, with a good deal of replacement.

Q. I fear that I have not yet received a direct answer, if you can give me one—if you can't, you may say so—to my question whether you think General Motors' share of the car market will increase in the next ten years.

A. Well, as an outside analyst, I wouldn't expect it to change upward a great deal for a couple of reasons that I have mentioned.

Q. You would expect it not to change upward a great deal.

A. I would expect it to go 60 per cent, and the last figure I had was 52 per cent.

[fol. 2917] Q. I am sorry. I didn't hear you?

A. I would not expect it to go beyond 60 per cent, and the last figure I had was 52 per cent.

Q. You expect it to increase somewhere between 52 and 60 per cent?

A. That wouldn't surprise me. On the other hand, because of the other possible antitrust proceedings, I would be a bit surprised if management might be that aggressive in that area. There are public policy overtones to that which, well, I don't know what management thinks it wants to do, but I know that individual personnel work very hard to make it become a success.

Q. You think management might get worried as they got above 52 per cent, do you?

A. They are at the 52 per cent, the last figure I had. I think management is worried now.

Q. Did you have occasion over the evening to read the testimony of Mr. Moses of the Massachusetts Investment Trust?

A. No. I read Mr. Kunhardt's.

Q. Do you know that the Massachusetts Investment Trust has a separate portfolio which is designated as a portfolio of growth stocks?

A. There are two funds. One is MIT, and one is MIT growth.

Q. Do you know how much General Motors stock, if any, the growth fund has in it?

A. I can't remember having read that in the portfolio.

Q. You don't know whether it has any or not?

A. I couldn't testify of my own personal knowledge that it has any.

Q. You don't know that Mr. Moses testified that they do not buy General Motors for the growth fund of the [fol. 2918] Massachusetts Investment trust?

A. I understood you to tell me that yesterday.

Q. You haven't read that testimony?

A. No, sir.

Mr. Cox: That is all.

Mr. Reycraft: No redirect.

The Court: You are excused.

(Witness excused.).

Mr. Bushby: If the Court please, in connection with the testimony of Mr. Scanlon, there was an exhibit marked for identification as Christiana Exhibit No. 1 which in oversight was not offered in evidence.

It is a schedule of prices of AT&T in connection with their offerings. I would like to formally offer it now.

The Court: It is received in evidence.

(Said exhibit, so offered and received in evidence was marked Christiana Exhibit 1.)

Mr. Ludlow: The Government calls Mr. Rogers.

---

George B. Rogers, called as a witness on behalf of the Government, in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ludlow:

Q. Will you please state your full name?

A. George B. Rogers.

Q. What is your occupation, Mr. Rogers?

A. I am an attorney.

Q. Do you appear here representing the First National Bank in response to a subpoena directed to the bank?

A. Well, I don't represent the First National Bank here; I am appearing in response to a subpoena.

[fol. 2919] Q. Did you, at the request of the Government, cause an examination to be made of the trust files of the First National Bank to determine the character of the allocation of the stock on stock dividends for securities held by the bank, as trustee?

A. Yes, I did.

Q. Did this examination disclose the allocation made in relation to distribution of shares of the Northern Illinois Gas Company to trusts holding Commonwealth Edison stock?

A. Yes, sir.

Q. How many trusts were involved?

A. Approximately one thousand.

Q. Can you tell us how the allocation was as to those instruments?

A. I believe that the 1954 dividend was within the company's income for that year, and was an income distribution. The allocation was made to income except in those trusts where the instrument required an allocation to principal.

Q. And reference is made first to the instrument, and then to the applicable law of the jurisdiction?

A. Yes.

Q. Are you aware of any litigation which arose out of this allocation procedure from this distribution?

A. No, I know of none.

Q. In connection with this examination, did you also obtain information pertaining to the distribution of Standard Oil of New Jersey shares to trusts holding Standard Oil of Indiana shares?

A. Yes, I did.

Q. How many instruments were here involved?

A. About 1,800 different trusts.

Q. What allocations were made?

A. The allocations were made to income, except in thirteen trusts in which the instrument required an allocation of the dividend to principal.

[fol. 2920] Q. Here again, are you aware of any litigation that arose out of this particular allocation procedure?

A. No, I know of none.

Q. Did the files of the trust department reflect a distribution of shares of the Radio Corporation of America to trusts holding General Electric and Westinghouse shares?

A. Yes.

Q. Do you have the total number of instruments involved in this case?

A. No. I was unable to get that information regarding that distribution which occurred a good many years ago.

Q. Are you able to characterize the number of instruments in any way?

A. All I was able to discover was that the same procedures were followed with respect to that distribution as were followed with the others. In other words, an examination was made of each of the trust instruments where the trusts held the shares on which the dividends were being declared, and an allocation was made as between principal and income based upon the requirements of the instrument.

Q. Then where the instrument did not specifically cover the situation, the law of the jurisdiction was resorted to?

A. That is correct, yes.

Q. Which, as I understand it, would put it into income, is that correct?

A. That is true.

Q. Are you aware, here again, of any litigation involved in this allocation?

A. No, I know of none.

Q. Did the examination of these trust records show allocation by the bank with regard to the distribution of shares other than the ones that we have specifically mentioned?

A. There have been a few other instances, yes, but the numbers involved were very small.

[fol. 2921] Q. The number of trusts involved?

A. Yes.

Q. I presume that the allocation followed the same pattern, is that correct?

A. Yes.

Q. Without considering then these other distributions,

are you familiar enough with the situation to know whether or not there was litigation involved following the allocation?

A. I know of none.

Mr. Ludlow: Thank you.

Cross-examination

By Mr. Burnham:

Q. Mr. Rogers, with respect to the Commonwealth Edison distributions, I think you mentioned two, 1954 and 1955?

A. There were two.

Q. Did your bank receive from Commonwealth Edison a memorandum or legal opinion relating to those distributions and trust problems involved in connection with them?

A. Yes, sir.

Q. Do you have a copy of that with you, Mr. Rogers?

A. Yes, I do. You want just the opinion?

Q. No. May we have the correspondence too, please?

A. Yes.

Mr. Burnham: May I have this document marked General Motors Exhibit No. 29 for identification, please?

(Thereupon said document was marked General Motors Exhibit No. 29 for identification.)

Mr. Reycraft: Do you have any copies of that, Mr. Burnham?

Mr. Burnham: No, I just saw it.

Mr. Ludlow: May we see it?

[fol. 2922] Mr. Burnham: Yes.

By Mr. Burnham:

Q. This document which has been marked General Motors Exhibit 29 for identification is a letter, is it not, addressed to Mr. Paul Ferrier of the Trust Department of your bank from Commonwealth Edison Company?

A. Yes, that is true.

Q. And the letter states, does it not, that it is enclosing a memorandum prepared by Isham, Lincoln & Beale, prepared chiefly for the use of trust companies and others holding the stock in the capacity of trustee, is that correct?

A. Yes.

Q. And attached thereto, Mr. Rogers, is the memorandum of Isham, Lincoln & Beale, referred to and dated February 10, 1955?

A. Yes.

Q. With certain other attachments that are referred to in the memorandum, being resolutions of the board of directors and the like?

A. That is true.

Mr. Burnham: Your Honor, I offer this document into evidence as General Motors Exhibit No. 29.

Mr. Ludlow: Your Honor, I am not aware of the fact that we have a copy of this, and I would like to examine it, possibly over the recess.

The Court: The Court will reserve its ruling.

By Mr. Burnham:

Q. You stated on direct, Mr. Rogers, that the 1954 distribution by Commonwealth Edison of stocks of the Northern Illinois Gas Company was in size or in dollar value within [fol. 2923] the earnings of Commonwealth Edison of that year, is that correct?

A. Yes, that is correct.

Q. And in the case of Standard Oil of Indiana and its distributions of Standard of New Jersey stock, is the same thing true so far as you know?

A. Yes.

Q. The 1955 distribution by Commonwealth Edison of stock in Northern Illinois Gas was considerably larger, was it not, than the earnings of Commonwealth Edison in that year?

A. That is my understanding, yes.

Q. The allocation of the 1955 distribution was handled differently, was it not, by your bank, from the allocation of the 1954 distribution?

A. Yes, sir.

Q. Mr. Rogers, are you familiar with the terms of the Government decree, the proposed Government decree in this case?

A. Only very vaguely.

Q. Are you aware of the size of the distributions contemplated under that proposed decree?

A. Yes.

Q. How does the size of the proposed distributions compare with the size of the distributions which were involved in any of the issues Government counsel asked you about on direct?

A. Well, the size of the proposed General Motors stock distribution is very much larger than any of these other distributions that we are talking about in relation to either current earnings or the book value of the assets of the companies involved.

Mr. Burnham: I have no futher questions, your Honor.

Mr. Ludlow: Your Honor, I would like to defer any redirect which we might have until I have examined the document, if that is agreeable, after the recess.

The Court: Is there any objection?

Mr. Burnham: No objection.

[fol. 2924] The Court: Very well.

(Witness excused.)

Mr. Reycraft: The Government calls Mr. Guy Hill.

---

Guy R. Hill, called as a witness on behalf of the Government, in rebuttal, having been previously duly sworn, resumed the stand and testified further as follows:

Colloquy Between Court and Counsel

Mr. Cox: Mr. Reycraft, may it please the Court, perhaps we could save some time.

Are these the documents that were marked for identification in connection——

Mr. Reycraft: These documents have been marked for identification Government Exhibits 618 through 673. That is, these I have. There are a few more.

Mr. Cox: These are the ones that were marked in connection with Doctor Friend's testimony?

Mr. Reycraft: Yes, sir, that is correct.

Mr. Cox: If the purpose of calling Mr. Hill is to establish the authenticity of these charts, and how they were compiled, I think perhaps we can avoid that.

There may be one or two of them that we have an objection of a different kind to, but I am not inclined to insist that Mr.

Hill testify as to how he put the charts together unless there is some other purpose of his testimony.

Is that agreeable?

Mr. Tierney: Yes, that is all right.

Mr. Reycraft: He will merely testify as to how he put them together, and that he prepared them at Doctor Friend's request.

Mr. Cox: I am prepared to stipulate that.

[fol. 2925] Mr. Reycraft: I offer Government Exhibits 618 through 668.

The Court: They are admitted.

Mr. Cox: May it please the Court, may we have just a moment to look at these?

May it please the Court, there is a problem as to the exhibits that are marked Government Exhibits 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638—that is all.

The first of these exhibits, may it please the Court, I should like to hand to the Clerk, so the Court can look at them——

The Court: I have a set here.

Mr. Reycraft: Yes. That is the large chart.

Mr. Cox: This is an exhibit which is exactly like a similar exhibit the Government introduced in its main case, except that this exhibit sets forth some price material with respect to public utility companies. I object to the admission of this table and the supporting table on the ground that it is not proper rebuttal, and that there was no reason why the Government should not have introduced this material as a part of its main case.

The defendants did not put in any evidence with respect to offerings of the common stock of public utility corporations. It was our position that those offerings were irrelevant and, indeed, some of the witnesses that were called by the plaintiff testified that the difference between the offerings of common stock of industrial companies and the offeringsof the common stock of pub-

[fol. 2926] lic utility companies were so great, that the latter had very little, if any, relevance.

There was no reason why the Government could not have presented this chart when Dr. Friend first testified. It is exactly the same kind of chart that was introduced in respect to industrial stocks.

It does not rebut any testimony that was offered by any of the defendants in this case. It is a complicated chart and the supporting material is voluminous, although, if Mr. Hill prepared it, I am satisfied that so far as its technical accuracy is concerned, there is probably no question to be raised, but there are questions as to its significance and relevance which we have not had adequate opportunity to consider because of the late stage in the litigation in which it has been brought forward.

We submit for these reasons that this is not proper rebuttal and it has no place in this case and the Government should not be permitted to offer it and have it received in evidence at this time.

Mr. Reycraft: I would like to say, your Honor, first that Dr. Friend on Monday testified with respect to these offerings, the particular ones covered by these exhibits. He considered them in relation to his testimony in rebuttal of the general statements which were made by a number of defense witnesses with respect to the market impact of the offering of substantial amounts of common stock.

I certainly would not disagree that a utility stock is different than an industrial in some respects. I would not disagree that General Motors differs from Ford in some respects. I think it is clear also that General Motors is [fol. 2927] more similar to AT&T than it is to many other industrials.

There is a broad range of interchange among all of the stocks, which I think many of the witnesses have established.

I think the fact that Mr. Cox did not object at the time Dr. Friend testified with respect to these matters, indicates that it was not so apparent to him at the time that this was not relevant to proper rebuttal. I might also say this chart is a further effort on our part to find out what the facts are in examining the testimony of the defense witnesses, to find out where in the world these percentages come from, and Dr. Friend asked us to make these charts in order that if there is anything we have missed in the way of establishing these facts with respect to issues which have already been offered, that he would like to know about it.

I think insofar as his testimony is concerned it indicates that the experience is similar, it is a supply and demand

situation with respect to securities, and the utility stocks are extremely similar to industrials in some respects and they are different in others, just as utilities differ among themselves and industrials differ among themselves.

Mr. Cox: May it please the Court, this is quite a serious matter to us because the Government is now coming forward with 12 or 15 brand new issues which have not been [fol. 2928] in the case before. The argument about Doctor Friend is a bootstrap argument. He was not asked a question in which the word "utilities" appeared, and he testified before we knew what he was going to say.

I do not think that Mr. Reycraft can get this exhibit get into the record on the basis of that testimony. The real point is that this is not rebuttal. No witness of ours testified about any of these issues or about any utility issues at all, and to require us now to consider, perhaps by way of sur-rebuttal to bring forward some evidence about 12 or 15 issues of public utility stocks, I think is unfair. I think it is grossly unfair.

This could have been done three or four weeks ago by the Government, and there is no excuse for their not having done it.

Mr. Reycraft: I might say——

Mr. Cox: (Continuing) it has nothing to do with our percentages because the testimony of those witnesses did not touch in any way on public utility stocks.

Mr. Reycraft: I might say, your Honor, the basic statistical material with respect to these issues was offered as part of the Government's direct case, and Mr. Cox had copies of that data at that time. These further exhibits demonstrate graphically what the basic material shows.

For example, on Government's Exhibit 619 the figures on the top of the page are set forth in Government Exhibits which were offered at the time of the Government's direct case.

Now, in an effort to have the material as accurate and as fair as possible, Doctor Friend asked that it be portrayed [fol. 2929] with respect not only to the price of the particular issue, but deflated to the utility stock index so that any suggestion that we were riding a general upward market and not showing its relationship to other stocks would be avoided.

I think in trying to rebut these very vague and general percentages which have been offered by many of the defense witnesses, we have no other alternative but to go to what the facts are and try to refine the material any way we can and show what those facts are, and we have done it.

Mr. Cox: I have no objection to any material, Mr. Reycraft—Mr. Reycraft has some material here that I am not going to object to that has to do with industrial issues, which is what our witnesses testified about, but Mr. Reycraft cannot point to a single passage in the case put in by the defendants which bears in any way on this material.

This reference to percentages is, of course, meaningless. Our witnesses did not base their percentages on this material on public utility stocks and this material has no relevance to any percentages, and Mr. Reycraft has not yet explained why it was that when he put in the same chart as to industrials three or four weeks ago he did not bring forward this chart.

Now, this rebuttal, of course, and sur-rebuttal, can go on indefinitely, if every time the Government thinks of something new which it should have done three weeks ago, can come in and put it in now.

Mr. Reycraft: I think we are going to finish today.

Mr. Cox: Well, you may finish today, of course. You can put in anything you like and we are left without an [fol. 2930] opportunity of answering. You can finish this noon.

Mr. Reycraft: Well, I might point out the AT&T issue was discussed but I am sorry I cannot give you the pages, but just this morning Mr. Bushby offered an exhibit with respect to AT&T, which is a utility. I do not think I can say any more than I have, your Honor, except these charts were prepared in connection with Doctor Friend's rebuttal.

He asked that this material be done so he would be able to give a full and complete analysis of the defense testimony with respect to the market impact testimony which has been offered and that was my purpose for offering these exhibits.

The Court: I think they should be received in evidence.

(Said exhibits, so offered and received in evidence were marked Government's Exhibits 618 through 668.)

Mr. Reycraft: Doctor Friend also referred in his testimony to price charts with respect to the Great Atlantic & Pacific Tea Company common stock secondary and Ford Motor Company secondary.

We have had these marked for identification as Government Exhibits 672 and 673.

I offer these exhibits in evidence.

Mr. Cox: No objection.

The Court: They are admitted.

(Said documents, so offered and received in evidence, were marked Government Exhibits 672 and 673.)

[fol. 2931] Mr. Reycraft: There was also marked for identification as Government Exhibit 674, a chart relating to Great Atlantic & Pacific Tea Company, the number of shares outstanding and held by the Hartford Foundation and the Hartford family.

I offer Government Exhibit 674.

Mr. Cox: We have not seen this exhibit, Mr. Reycraft, and I should like an opportunity to examine it.

Mr. Reycraft: This may be my oversight, your Honor, although Mr. Horsky has seen it, I believe.

Mr. Horsky: No, I have not seen it.

Mr. Reycraft: Pardon me. I will withdraw the offer, your Honor, until they have had an opportunity to see it.

The Court: It is withdrawn.

Mr. Reycraft: May we have marked for identification as Government's Exhibit 677 a chart which Doctor Friend referred to in his testimony, entitled, "Dividends Per Share and Price Earnings Ratio for Four Selected Stocks, Aluminium Limited, Aluminum Co. of America, Reynolds Metals Co. and Kaiser Aluminum & Chemical Corp."?

(Thereupon said document was marked Government Exhibit 677, for identification.)

Mr. Reycraft: I offer Government's Exhibit 677.

Mr. Cox: I have no objection.

The Court: It is received.

(Said document, so offered and received in evidence, was marked Government Exhibit 677.)

Mr. Reycraft: If the Court please, may we have a short recess?

[fol. 2932] Mr. Sheets, from the Blyth Company, is downstairs, and he will be right up.

The Court: The Court stands recessed for ten minutes.

(Whereupon a short recess was taken, after which the following further proceedings were had:)

The Court: You may proceed.

Mr. Ludlow: Your Honor, the Government has no objections to the document, General Motors Exhibit 29.

Mr. Burnham has a comment to make at this time.

Mr. Burnham: Your Honor, I would like to read just one sentence from the Isham, Lincoln and Beale memorandum which is a part of this exhibit, because it does bear upon the question of the size of distribution.

This is the last sentence in the Isham, Lincoln and Beale memo of February 10, 1955, which is a part of General Motors Exhibit 29:

> "In view of the fact that Edison's original plan for distribution of the gas company common stock was changed because of its receipt of the favorable January 20, 1955, tax ruling, and in view of the size of the second distribution in relation to Edison's assets and earnings, the Board of Directors of Edison considered the second distribution to be of a different nature than the first distribution and used the distinguishing words 'a division of corporate assets' in authorizing the second distribution, with the thought that for trust accounting and for other purposes the [fol. 2933] second distribution might be properly treated as constituting a distribution of principal, rather than income."

That is the end of the quote.

Mr. Ludlow: There is no redirect, your Honor.

Mr. Cox: If it please the Court, Mr. Reycraft and I have agreed in relation to Exhibits 618 through 668, which are the charts we were discussing before the recess.

These are price charts, and I understand, and I believe Mr. Reycraft confirms my understanding, that these carry the price that Mr. Hill used as the month end closing price on that day.

Mr. Reycraft: That is my understanding, your Honor.

Mr. Cox: We may also, may it please the Court, wish, in the case of some of these exhibits, to check them for accuracy. We understand Mr. Hill was working under a great deal of pressure, and I think I have an agreement with Mr. Reycraft that if there are any clerical errors or inaccuracies of any kind, we can correct them.

Mr. Reycraft: We will be pleased to have them corrected.

Mr. Owens: The Government will call Ralph Sheets.

---

RALPH C. SHEETS, a witness called on behalf of the Government in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Owens:

Q. Will you state your full name, sir?

A. Ralph C. Sheets.

Q. What business organization are you associated with?

A. With Blyth & Company.

[fol. 2934] Q. What is your position with that organization, sir?

A. I am vice-president in charge of national sales.

Q. In that capacity, did you have occasion to be acquainted with the offering of two million shares of Ford Motors Company stock on March 31, 1959?

A. I did.

Q. Was that a new offering, sir, or a secondary offering?

A. That was a secondary offering.

Q. Who was the selling stockholder?

A. The Ford Foundation.

Q. Do you know what the price was at which that was offered to the public?

A. $56.50.

Q. Do you know what the spread, the underwriting spread, was between the price offered to the public and the price received by the selling stockholder?

A. That was $2 a share.

Q. How was that broken down as among the different elements making up that total of $2?

A. That was divided, a management fee of 30 cents a share; selling group concession of $1.15 a share; leaving 55 cents a share as the underwriting profit.

Q. Is that before expenses, sir?

A. That is before expenses.

Q. Do you know what per cent the total spread was as the per cent of the offering price?

A. Yes, that was 3.54 per cent.

Q. Are you acquainted, sir, with whether or not that 3.54 per cent is smaller than other offerings during the period 1958-59?

A. That is among the lowest.

Q. I beg your pardon?

A. That is among the lowest.

Q. Do you know any other one that is lower?

A. That is in 1958-59?

Q. That is correct.

A. No. I have some record here, but it does not show [fol. 2935] any lower. I do not know the exact percentage of the underwriting spread to the offered price on the Atlantic and Pacific Tea offering. That must have been close. I do not know that exact spread.

Q. That is the only one that you might be uncertain about?

A. That is right.

Q. Now, could you tell us whether or not the size of the underwriting spread in per cent is a measure of the risk that the underwriter has, or does it reflect the underwriter's judgment as to the degree of risk that is involved in the underwriting?

A. Yes, it does. That is included in the consideration of the spread. That is one factor.

Q. So that where they appraise the risk as greater, the spread tends to be greater, is that correct?

A. That is correct.

Mr. Owens: I will ask the reporter to mark for identification as Government Exhibit No. 678, a document which is an Agreement among the Underwriters, dated March 31, 1959.

(Thereupon said document was marked Government Exhibit No. 678, for identification.)

By. Mr. Owens:

Q. Do you have a copy of that agreement before you, Mr. Sheets?

A. I do.

Q. Would you turn to Page 2 of that agreement?

A. Yes, I have that.

Q. You will note Paragraph 5 there, entitled "Broad Distribution Agreement."

A. Yes.

Q. That reads in part: "We agree to use our best efforts [fol. 2936] to assure a broad distribution to the public of our retained or released shares, and to take all action which, in our opinion, is reasonable and practical under the circumstances, to assure that no single purchaser or group of related purchasers will acquire any substantial portion of such shares."

Do you know at whose request——

A. That is in at the request of the Foundation, the selling stockkholder.

Q. Is that a common agreement in underwriting, is that a common provision in agreement among underwriters?

A. I don't think it is a common agreement provision, no.

Q. Do you know, sir, whether or not a similar requirement or provision was contained in the selling agreement?

A. Yes, it was.

Q. Would you turn to the selling agreement that is also found in Government Exhibit No. 678?

A. Yes, Paragraph——

Q. Paragraph 3 thereof, entitled "Broad Distribution Agreement," reads as follows:

> "You agree to use your best efforts to assure a broad distribution to the public of the Shares purchased by you, and to take all action which, in your opinion, is reasonable and practical under the circumstances, to assure that no single purchaser or group of related purchasers will acquire any substantial portion of such Shares."

Was this provision inserted in the selling agreement also, at the request of the Ford Foundation?

A. That is right.

Mr. Owens: I offer Government Exhibit 678.

Mr. Cox: No objection.

The Court: It is admitted.

[fol. 2937] (Said document, so offered and received in evidence, was marked Government Exhibit No. 678.)

By Mr. Owens:

Q. You stated, Mr. Sheets, that the selling stockholder was the Ford Foundation. Do you know what percentage of the total outstanding equity of the Ford Motor Company was owned by the Ford Foundation prior to this offering, sir?

A. Yes, it was 65.9 per cent.

Q. Do you know what per cent their equity was of the outstanding stock in the Ford Motor Company after the offering?

A. Yes, it was 62.3 per cent.

Q. What would that make the percentage of the two million share offering on March 31st?

A. The difference in that would be 3.6 per cent, representing the amount of this offering.

Q. Do you know what the purpose of the selling stockholder, the Ford Foundation, was?

Mr. Cox: I object to that question on the ground there is no foundation laid.

The Court: It seems to me immaterial. Sustained.

Mr. Owens: I will ask the reporter to mark for identification, as Government Exhibit No. 679, a document which is the prospectus of the two-million shares offering of Ford Motor Company common stock.

(Thereupon said document was marked Government Exhibit 679, for identification.)

By Mr. Owens:

Q. Do you know, sir, what the purpose was in the Ford Foundation's offering these shares to the public?

Mr. Cox: I object It is the same question.

[fol. 2938] The Court: Sustained; immaterial.

Mr. Owens: I think it is material, your Honor, in respect that the reception that the public accorded the stock might vary according to the purpose of the selling stockholder.

Mr. Cox: Why don't you just put the prospectus in? It speaks for itself.

The Court: The ruling stands; sustained.

By Mr. Owens:

Q. Do you know, sir, whether or not the Foundation made any statement with respect to its future intentions of selling the remaining shares that it owned after this offering?

A. It reserved its right to make sales in the future. I don't know of any intention that was announced.

Mr. Owens: I offer Government Exhibit 679, the prospectus in relation to this offering.

Mr. Cox: No objection.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 679.)

Mr. Owens: I would like to read, in part, from page 25 of that prospectus the following excerpt:

> "The sale of the shares offered by this Prospectus is to enable the Foundation to effect a futher diversification of its investments. The Foundation may, from time to time sell further portions of its holdings of stock of the Company. It may also from time to time make grants to scientific, educational or charitable organizations in the form of shares of Class A Stock or of shares of Common Stock resulting from the conversion of Class A Stock."

[fol. 2939] By Mr. Owens:

Q. Do you know, Mr. Sheets, what the total amount of common stock was outstanding of the Ford Motor Company prior to this offering?

A. Yes, there were 12,336,504 shares.

Q. Do you know what percentage the offering of two million shares was of the total common stock outstanding of the Ford Motor Company at the time of the offering?

A. Yes, that was 16.2 per cent.

Q. Would you tell us what time of day on March 31st the offering was made to the public?

A. Approximately 4:00 p.m.

Q. Was that immediately after the offering price was agreed upon?

A. That is correct.

Mr. Owens: I will ask the Reporter to mark for identification Government Exhibit No. 680, which has the caption "Price Range of Ford Motor Common Stock on the New York Stock Exchange February 27 through April 3, 1959."

(Thereupon said document was marked Government Exhibit 680, for identification.)

By Mr. Owens:

Q. Do you have a copy of that document, Mr. Sheets?

A. Yes, I do.

Q. Do you know, sir when the managers announced that the subscription books for this offering were closed?

A. Yes, at 11:50 a.m. on April 2.

Q. Would you tell us normally whether or not the managers had an indication that this offering would be fully sub-
[fol. 2940] scribed or over-subscribed prior to the time that the books were formally closed?

A. Yes, we did.

Q. When did that occur, would you say?

A. That would be difficult to pin point in time of hours. It was prior to 11:50, the closing of the subscription books, because they wouldn't have been closed unless we thought the deal had been successfully completed.

Q. Would you know, sir, whether it was late on April 1st or the morning of the 2nd?

A. I would guess—I wouldn't know that exactly. I would guess it would be early in the morning of the 2nd.

Q. Do you know, sir, when the offering provisions of the agreement among the underwriters was terminated?

A. Yes, they were terminated at 10:30 a.m. on April 3.

Q. Do the offering provisions include restrictions on price?

A. Yes, they do.

Q. Would you tell us what those restrictions are, sir?

A. The offering provisions require the underwriters and selling group to sell the stock acquired under this offer at $56.50 a share with permissible concessions to dealars or back to the syndicate manager, less some part of the syndicate concession of $1.15.

In other words, the public offering price must be maintained at $56.50 during the life of that agreement and those provisions.

Q. And those offering provisions include restrictions on trading?

A. Yes, they do.

Q. By members of the underwriting and members of the selling group?

A. Yes, they do.

Q. What are those restrictions, sir?

Mr. Cox: Aren't the restrictions all in evidence in these documents? I object to it. The documents speak for themselves.

[fol. 2941] Mr. Owens: I submit that this witness can explain what the trade practices are.

The Court: If he knows independent of the documents, he may answer.

Do you know?

The Witness: Indepenlent of the documents? Well, it is part of the agreement which prevents them from soliciting orders that are executed as principals, or even soliciting orders as agents.

By Mr. Owens:

Q. And does it prevent them from trading in shares for their own account?

A. That is correct.

Mr. Owens: I offer Government Exhibit 680 for identification.

Mr. Cox: No objection.

The Court: It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 680.)

By Mr. Owens:

Q. Mr. Sheets, in your capacity with Blyth & Company, do you have some way of determining what the extent of institutional demand was for the Ford stock offered on March 31?

A. Yes, we explored that during the registration period.

Q. And do you have some way of calculating in part what the total amount of sales to institutions was in connection with that offering?

A. Well, we know the number of shares that were confirmed on a directed sales basis to certain institutions. [fol. 2942] Q. And would you indicate what directed sales are, sir?

A. Directed sales is where an institution or large buyer wishes to place an order for some of the offering and divide it among underwriters and selling members as he sees fit that he normally does business with.

Mr. Owens: I will ask the reporter to mark for identification Government Exhibit 681.

(Thereupon said exhibit was marked Government Exhibit 681 for identification.)

Mr. Owens: It is headed, "Ford Motor Company Common Stock Directed Sales."

By Mr. Owens:

Q. Mr. Sheets, was this prepared by your organization?

A. Yes, it was.

Q. And do you know the date as of which it reflects the directed sales?

A. As of the date——

Q. As of what date it reflects?

A. As of the offering date.

Q. As of the offering date?

A. As of the offering date.

Q. I note on that document there are 308,250 shares shown as for the total of directed sales. Do you know, sir, what approximate per cent that would be of the total of two million offered?

A. Approximately 15 per cent.

Q. And do you know, sir, whether or not there are additional sales to institutions that would not be reflected in a compilation under the heading, "Directed Sales?"

A. Yes, there would be.

Q. Is there available as of this date a business record that would show what the quantity of additional institu-
[fol. 2943] tional sales were?

A. No. I only know that there were additional ones because I know that Blyth made additional sales to institutions that are not reflected on here, and I am certain that other underwriters must have done the same thing.

The amount will not develop until the distribution records are assembled, which might be a matter of four or six weeks.

Q. Based on your acquaintance with those records in your capacity with Blyth & Company, would you be able to state whether they would reflect a very sizeable quantity in sales to institutions in addition to those shown on this Exhibit 681?

Mr. Cox: I object to the form of the question.

The Court: Sustained.

By Mr. Owens:

Q. Do you know, sir, whether or not there was a sizeable quantity of sales, in addition to those shown on Government Exhibit 681?

A. A sizeable quantity of sales?

Q. Institutional sales or sales to institutions?

Mr. Tierney: Are you asking him if he knows, now?

By the Witness:

A. That is a relative term, "sizeable." I do not know what sizeable would be, but I am sure there were additional ones. The size of them will develop when the records are assembled.

By Mr. Owens:

Q. Do you have any way of estimating that, sir, at all?

A. No, I haven't.

Q. What was the extent of the underwriting commit-
[fol. 2944] ment of Blyth & Company in its offering, Mr. Sheets?

A. 77,000 shares.

Q. Did you sell all of those shares?

A. Yes, we did.

Q. And did you sell any additional shares?

A. Yes, we did.

Q. Do you know what the volume of additional sales that was made by Blyth & Company in addition to this 77,000 that they underwrote was?

A. Yes; in addition to the underwriting of 77,000 shares Blyth & Company drew in the selling group, 96,437 shares, and we retailed all of that, and the total retail of the firm was 173,437 shares.

Mr. Owens: No further questions.

Mr. Cox: May it please the Court, I intend to ask the witness a few questions on cross examination, but before I do so, I should like to observe that, as I understand the situation, a subpoena duces tecum was served on Blyth & Company by the Government, requiring the production in this Court of certain records.

I take it the Government has made a selection of those records and has put them in evidence through this witness. I think that the defendants should be given an opportunity to inspect the balance of the documents that were produced by Blyth & Company under that subpoena, so that we can determine whether the documents not put in evidence by the Government include any documents which, in the interest of the whole picture, should be introduced in evidence, and I take it the Government will have no objection.

Mr. Owens: We have no objection, your Honor.

Mr. Cox: We could look at those documents perhaps over the noon recess, your Honor.

[fol. 2945] Cross-examination.

By Mr. Cox:

Q. Mr. Sheets, you were asked some questions about the sale of this recent Ford offering to institutional purchasers. Can you tell us whether the demand by institutional investors for Ford stock was greater or less in the

case of this issue than it was in the case of the first Ford secondary, which took place about three years ago?

A. It was considerably less in this instance.

Q. Was more sales effort required in the case of the recent second offering to sell to institutional investors than was required in the case of the first offering?

A. Yes, it was.

Q. Mr. Sheets, did all of your sales efforts in relation to this issue take place between the time that the offering price was announced and the shares were released to the public offering, and the hour at which the subscription book was closed?

A. Not all.

Q. How long did the sales effort last?

A. It commenced about the filing date and continued through the termination of the subscription books.

Q. Throughout that time were you and the other members of the group soliciting manifestations of interest in the offering?

A. We certainly were.

Q. Was that an intensive effort that was carried on in that period.

A. Yes, it was.

Q. Do your records show what the underwriting commitment of Merrill Lynch was in connection with this recent Ford secondary?

A. Yes, they will. It was the same as ours, 77,000 shares.

Q. 77,000 shares?

A. Yes.

Q. Was any additional allotment of shares made to them [fol. 2946] in the course of the underwriting?

A. Yes, there were.

Q. Will you tell us what that additional allotment was?

A. I don't have that record here. It was very substantial. I can give you an approximation of it.

Q. That would be sufficient for my purposes, Mr. Sheets.

A. I believe that their total sales were in the range of 214,000 shares. If you deduct the 77,000 shares from the 214,000, you get about what they got in the selling group.

Q. That would be something in the neighborhood of a hundred thirty-seven thousand shares, as I compute it.

Now, when was that additional allotment made to them, Mr. Sheets, do you recall?

A. I would not know exactly. I would gather it was made during the course of the deal. I would not be able to answer when.

Q. Do you have any recollection as to whether it was at the beginning or in the middle, or towards the end of the period?

A. No. That would be a matter for our syndicate department.

Q. Would Mr. Duffy know about that?

A. Yes, he would know about that.

Q. Do you know why that additional allotment was made to Merrill Lynch?

A. It was made because they had the ability to distribute the shares.

Q. Was it made because it was believed that their ability at the time of the additional allotment to distribute the shares was perhaps greater than the ability of some of the other members of the underwriting group?

A. Very definitely.

Q. These additional shares were shares that had originally been the responsibility of other members of the group, I take it?

A. Underwriting-wise.

[fol. 2947] Q. Underwriting group?

A. That is correct.

Q. Now, you have testified that the spread in this recent offering, which includes the management fee and commission, was $2.

A. That is correct.

Q. What was the spread on the first Ford secondary, Mr. Sheets?

A. The gross spread on that one was one dollar and fifty cents.

Q. Can you tell us why the gross spread on the recent secondary offering was larger in dollar amount than the spread in the first Ford secondary?

A. It was a more difficult selling job.

Q. The second offering?

A. The second offering was a more difficult selling job.

Q. A more difficult selling job?

A. Correct.

Q. One of the exhibits introduced by the Government was marked and admitted in evidence as Government Exhibit 680, which is a table showing a price range of Ford stock. You have a copy of that table.

A. I do.

Q. This shows that the registration—this document to which I have referrred, Government Exhibit 680, shows that the registration statement was filed on March 12th. Do you recall, Mr. Sheets, whether it was understood in Wall Street before March 12 that there was to be a secondary offering of Ford stock?

A. There were a great many rumors. There was no official announcement prior to that.

Q. Do you remember when the preparation of a registration statement was begun?

A. No, I wouldn't know that.

Of course, they had a filing date. There wouldn't need to be—I have no idea when it was commenced.

[fol. 2948] All you know was that it was——

A. Sometime before the 12th.

Q. Before March 12th?

A. Correct.

Q. You spoke a moment ago of rumors that there would be a secondary offering. Do you recall that the Dow-Jones ticker on the 5th of March carried a story that there were reports that there would be a substantial secondary offering of Ford stock?

A. Yes, they did. I remember that.

Q. Do you recall that in the morning of the next day, that is, on March 6th, there were stories to the same effect in the New York Times and in the New York World Telegram?

A. I can't connect the date, but I am sure it was picked up in those papers, and the Dow-Jones Press, too.

Q. Do you also recall that beginning early in March there were a number of reports in the press dealing with the financial prospects of the Ford Company for the ensuing period of the year?

A. Yes, there were.

Q. Do you recall having seen in the Wall Street Journal for the Fourth of March a story stating that the Ford Division of Ford Motors Company intended to increase its output of motor cars in March by about 80 per cent more

than the output had been in the corresponding months of 1958?

A. Yes, I remember reading that.

Q. Do you recall that on March 15th, Mr. Sheets, there was a story in the New York Times announcing that the Ford Motor Company planned to spend more than 35 million dollars in improving, modernizing and expanding its steel making facilities in Dearborn, Michigan?

A. I don't recall that. I didn't read that.

Q. You don't believe you ever saw that?

A. I don't remember seeing it. I mean I didn't read the Times at the time.

[fol. 2949] Q. Do you recall when the annual report of the Ford Motor Company was issued for 1958?

A. No, I do not.

Q. You don't recall whether it was issued in March of this year?

A. No, I have no idea of the date it was issued.

Q. Do you recall having read in the press any statement with respect to the contents of that annual report?

A. No, I don't recall reading anything in the press on that.

Mr. Cox: I am going to mark a document for identification, a du Pont exhibit.

Mr. Owens: If your Honor please, we have no objections to defendants putting in such evidence as they want to in relation to this issue, but it seems to me that it is clearly beyond the scope of any direct examination.

Mr. Cox: I think it is relevant, your Honor.

The Court: I think it is relevant. Objection overruled.

Mr. Cox: May we have this marked as du Pont exhibit for identification 59?

(Thereupon said document was marked Defendant du Pont Exhibit 59 for identification.)

By Mr. Cox:

Q. Mr. Sheets, I am going to hand you a newspaper clipping, which has been marked du Pont Exhibit 59 for identification. This is a clipping from the World Telegram for March 12, 1959. That, by the way, was the date of the

filing of the registration statement, was it not? Do you recall that that was the date?

A. Yes, that was the date of filing.

Q. Now will you look at this clipping? Then I shall ask [fol. 2950] you a question.

A. You are referring to the item from the World Telegram, as well as the item from the Wall Street Journal?

Q. I think I misspoke. I am referring to the Wall Street Journal item, not the World Telegram item.

A. Do you want me to read this entire clipping?

Q. No. Let me ask you this question, if you have had a look at it.

Does that refresh your recollection as to whether you ever saw that story?

A. Yes, I undoubtedly saw this in the Wall Street Journal.

Q. In that, is there not an announcement by the Ford Motor Company, it refers to an announcement by the Ford Motor Company in its annual report that it intended to go into production of a small economy sized motor car?

A. Yes.

Q. Do you recall, Mr. Sheets, that later in March, 1959, specifically on the 12th—I am sorry—specifically on the 18th or 19th of March, there were announcements in the press with respect to the increase in Ford sales, in the early part of the month of March?

A. Yes, I remember seeing those.

Referring to the first third of the month?

Q. The first third of the month.

A. I remember those.

Q. Do you recall that those reports indicated that its sales had increased 58 per cent above the comparable period——

A. Yes, sir.

Q. (Continuing) —in 1958?

A. I recall that.

Q. Did you attend, Mr. Sheets, a meeting with investment bankers that preceded the Ford offering, in which Henry Ford, II, made a statement to the bankers, with [fol. 2951] respect to prospects of the Ford Company?

A. No, I did not attend that meeting.

Q. You didn't attend it?

A. I did not attend it.

Q. Mr. Sheets, did any of the underwriters who were invited to participate in the recent Ford secondary decline to do so?

A. I believe they did.

Q. Do you know how many declined to participate?

A. I think our Syndicate Department told me about—I thing there were five or six of those.

I thought I had a note on that here, but I do not have it.

Q. That is an approximately accurate number, you think—five or six?

A. Five or six. It might have been eight. Somewhere between five and ten.

Q. And all of those underwriters participated in the first Ford secondary?

A. I believe that is true.

Cross-Examination.

By Mr. Tierney:

Q. Mr. Sheets, I have just one question.

Would you refer to Exhibit 678, which is the Agreement among Underwriters?

A. Yes, sir.

Q. Paragraph 5. I call your attention to the words, "substantial proportion of such shares" appearing in Line 4.

A. Yes, sir.

Q. What did you understand that to mean at the time this agreement was entered into?

A. It is another one of those relative terms. It is most difficult to define what a substantial portion is.

Q. It was discussed, was it not?

A. Oh, I am certain it was.

Q. What did you understand it to mean?

[fol. 2952] A. I don't believe that I could put an extent on what was substantial. There is one indication of it in the amount that we sold to certain institutions. I believe the institutional list will show that we sold as much as 40,000 shares to one institution, so that must not have been too substantial to violate this agreement.

Q. 50,000 to another. That would be two and one-half per cent?

A. Of the offering.

Q. And you considered that wide distribution——

A. As not violating this agreement, we considered it.

Mr. Tierney: That is all.

Mr. Bushby: No questions.

The Court: Are there any further questions?

Redirect Examination.

By Mr. Owens:

Q. The sales effort that has been exerted between the time of the filing of the registration statement and the effective date, that is a normal procedure, is it not, in underwriting?

A. Yes, it is.

Q. With respect to those underwriters who declined to participate, are you acquainted with their reasons for declining?

A. No, I am not.

Q. Do you know how many total underwriters there were in the underwriting group?

A. In this present offering?

Q. That is correct.

A. There were 324.

Mr. Owens: Thank you.

Mr. Dallstream: If the Court please, I have a few questions.

The Court: You may inquire.

[fol. 2953] Recross-examination.

By Mr. Dallstream:

Q. Do you recall the offering price of the Ford issue of January of 1956? Do you recall at which price it was offered?

A. $64½.

Q. And the stock hovered in the high 60's for some period of time following that sale?

A. For several days.

Q. And remained in the 60's, however, during the period of January, February and March, did it not?

A. I don't have the market record of that action with me.

Q. Well, could I hand you these figures and ask if they will refresh your recollection on the action?

A. What was the period you extended it to?

Q. January, February and March.

A. Well, the prospectus shows a range of January 18th through March 6th of $70.00 to 59¼ low.

Q. Do you recall what the Dow-Jones averages were at the time of that first offering?

A. No, I do not.

Q. Would it refresh your recollection if I gave you the list prepared by Standard & Poor's for that period of three months beginning at the date of the issue?

A. I believe what we have here is Standard & Poor's average, rather than the Dow-Jones.

Q. Well, that is Standard & Poor's industrial average?

A. Yes.

Q. Is 462 about the appropriate figure about the time the first issue was out?

A. I have no direct knowledge of that.

Q. What has been the trend of the industrial averages since this offering in 1956 and up until the present time?

A. They are substantially higher now.

Q. So that there has been a substantial increase in the [fol. 2954] industrial averages during the period from 1956 to the present date?

A. Yes, there has.

Q. The offering price of the present issue is at a lower price than the issue that was made in 1956?

A. That is correct.

Q. So that the market price of Ford has been contrary to the industrial averages during that entire period?

A. Over the whole period it has been, that is correct, taking the period as a whole.

Q. And at the time of this subsequent offering, the price of Ford stock in relationship to the price in 1956 was substantially lower, whereas the industrial averages were substantially higher?

A. It is a matter of degree, but the direction is correct.

Mr. Dallstream: Thank you.

The Court: Any other questions?

Mr. Owens: No further questions.

The Court: You are excused.

(Witness excused.)

Mr. Andrews: We will call Doctor Deming, your Honor.

---

W. Edwards Deming, called as a witness on behalf of the Government, in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Andrews:

Q. Could we have your full name and address for the record, please?

A. My name is W. Edwards Deming.

I reside at 4924 Butterworth Place, Washington 16.

Q. Doctor Deming, by way of background, could you give us your academic experience?

A. Education or experience?

[fol. 2955] Q. I mean education.

A. I received the Degree of Bachelor of Science in Engineering at the University of Wyoming in 1921; Master of Science, University of Colorado, 1925; Doctor of Philosophy, Yale, 1928.

Q. Do you hold any honorary degrees?

A. The University of Wyoming awarded me the degree Doctor of Laws honoris causa in 1958.

Did I make a mistake? The degree from Yale University was 1928.

Q. I think perhaps you said your Master's degree at the University of Colorado was 1925. My records show 1924. Which is correct?

A. Yale, 1928, Doctor of Philosophy.

Q. Dr. Deming, would you give us some of your past experience or past positions that you have held?

A. Well, I was an instructor at the University of Wyoming and then at the Colorado School of Mines and at the

University of Colorado. Later, I was an instructor at Yale.

I lectured in mathematics at the National Bureau of Standards in their educational program from 1928 to 1942, approximately.

I taught at the Department of Agriculture in the Graduate school there from 1936 to about 1950. I had charge of mathematics and statistics there from about 1937 onward, to about 1953.

Q. Would you tell us something of the type of work that you do, Dr. Deming, at present?

A. I am a full professor of statistics at the Graduate School of Business Administration at New York University, but I do a good bit of consulting for industrial firms, marketing research companies, and the like. In fact, that is my main activity.

[fol. 2956] Q. Could you give us a little bit of your foreign experience and what some of your international activities have been?

A. I went to Greece twice in 1946 for the statistical work in connection with the Allied Mission to observe the Greek elections.

I was invited by the Government of India on two occasions to assist them with sampling methods there.

I have been to Japan five times; the first two times in connection with assignments for the military Government, and the other three have been by invitation at the expense of Japanese industry.

I have lectured and worked in a number of other foreign offices. I was an exchange scholar to Germany in 1952 and again in 1953.

Q. Were you a delegate to the Indian Science Congress in New Delhi in 1947, or did you mention that?

A. I was in New Delhi in 1947, at the Indian Science Congress as representative of the American Association for the Advancement of Science.

Q. You were also a member of the United Nations Sub-Commission on Statistical Sampling from 1947——

A. I was a member of the United Nations Sub-Commission on Statistical Sampling from 1947 through five years, when it terminated its existence.

I was at the Bureau of Census from 1939 up to about

1945 or 1946 in charge of the sampling in connection with the population census and other sample surveys there.

Q. Have you done any work in connection with the government of Mexico in sampling?

A. I have, sir. I have been to Mexico twice, in 1954, I believe. I was asked to come by the Bank of Mexico and [fol. 2957] by the Census of Mexico to assist with their sampling procedures on labor force, agricultural products, income, and other subjects.

Q. Doctor Deming, have you received any special recognition for any of your work?

A. Well, sir, the Japanese established in 1950 the annual Deming award, which is an award of money to a Japanese statistician, awarded annually to a Japanese statistician for his work.

There is also a medal to some Japanese company for improvement of quality of product through statistical methods.

I was awarded also, I might say, the Shewhart Medal in the year 1956 for work in sampling from the American Society for Quality Control.

Q. Dr. Deming, to what professional societies do you belong?

A. Would it be all right for me to refer to some notes that I prepared yesterday?

Q. Yes. Would this help?

A. Thank you.

I am a Fellow of the American Statistical Association; Fellow of the Royal Statistical Society of London; Fellow of the Institute of Mathematical Statistics; Fellow of the American Society for Quality Control.

I am a member of the International Statistical Institute and the Philosophical Society of Washington; of the World Association for Public Opinion Research; Market Research Council; Biometric Society.

I am an honory life member of the Union of Japanese Scientists and Engineers; an honorary life member of the Japanese Statistical Association.

I am a member of the American Society for Human Genetics.

Q. Dr. Deming, have you had any treatises or books [fol. 2958] published on statistical theory or techniques?

A. I have published several books on statistical theory.

There was "Least Squares" in 1939 and "Statistical Adjustment of Data" in 1943, published by John Wiley & Sons, New York, and my book on "Theory of Sampling" published in 1950 by John Wiley & Sons.

I have taken part in a number of others as editor or co-author.

Q. What uses have been made of some of your books or treatises, Dr. Deming?

A. Oh, sir, I see them cited in various publications now and then, in fact, from various sources, industrial and Government, in many parts of the world.

Q. Are any of them used in any universities as text books?

A. Oh, yes. I think they are both used, the 1943 book and Theory of Sampling is used in a number of places as a text book.

Q. Have any of your books been translated in other languages, Dr. Deming?

A. The book of 1943 was translated into Japanese. The book of 1950 was translated into Japanese, Yugoslavian, Spanish, and the main part of it also into German.

Q. Have you written any papers or matters of that kind in the field?

A. Sir, I have written a number of papers not counting short notices, book reviews, and the like. It would total to about 104, or something like that.

Mr. Andrews: May I have this marked Government Exhibit 682 for identification, please?

(Thereupon said document was marked Government Exhibit 682, for identification.)

[fol. 2959] By Mr. Andrews:

Q. I hand you an exhibit marked Government Exhibit 682 for identification. Does that contain a list of some of the papers and other studies that you have authored?

A. Yes, it does, sir.

Mr. Andrews: In order to save time, your Honor, I offer this into evidence, if there is no objection. There are some 104 papers on it.

The Court: Is there any objection?

It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 682.)

By Mr. Andrews:

Q. Doctor Deming, have you served on any committees whose purpose or objective was to write standards of sampling and interpretations to be used by constituted standardizing agencies?

A. Yes, sir. I have worked with the American Stardards Association intensively from 1940–1942 on standards of sampling.

I have worked with the American Standards Association on other occasions, and on other committees, for the same purpose but not so intensively.

I have worked with the American Society for Testing Materials since about 1947 on their committee which provides standards for the sampling of materials which form the basis of contracts for most exchange of vendor-purchaser relations in this country and in Canada. In fact, they are used all over the world.

Q. What is the essence of these documents that you have just referred to?

A. They pertain to probability sampling, sir, mainly with respect to the use of sampling.

[fol. 2960] Q. At present, Doctor Deming, what organizations engage your services and in what capacity?

A. I am engaged actively at the moment with two marketing and opinion research companies of national scope; one of the big three automobile manufacturers; the Southern Motor Rate Conference to get information on cost and revenue from hauling of truck traffic; one telephone company at this moment; the medical center in New York; the Lexington School for the Deaf. That is about all at this moment, sir.

Q. Doctor Deming, have you testified before any court or commissions with respect to any of your work?

A. Yes, I have.

I have testified a number of times, mainly for telephone companies in connection with the appraisal of their property for rate-making purposes. In fact, I have testified in Chicago on five occasions; perhaps four, I am not quite

sure, on rate cases here before the Illinois Commerce Commission.

I have appeared before the commissions of West Virginia, Virginia, Maryland, New Jersey, Tennessee, Alabama, Mississippi, and Ohio, only recently, for the Ohio Bell Telephone Company.

That is all I can think of right now.

I have testified before the Federal Communications Commission at their request to say something about standards of sampling in connection with one of their hearings. I have testified before the Interstate Commerce Commission on two occasions, once at the request of the Post Office Department in connection with the methods that the railways had used to estimate their cost of repairing head end cars.

[fol. 2961] I appeared before the Interstate Commerce Commission in 1956 in connection with the transcontinental divisions case.

I obtained information through sampling methods for the western railways which were one of the contestants. I don't remember whether they were plaintiff or defendant.

Q. Doctor Deming, would you tell us what the nature of your engagement was in connection with this case by the Department of Justice?

A. Would it be all right if I refer to some notes that I drew up?

Q. Yes, you may refer to them.

Mr. Gribbon: Is the witness going to read? Is that the understanding?

Mr. Andrews: I don't think so. He is just going to refresh his recollection.

Mr. Gribbon: He has exhausted it already?

Mr. Andrews: Do you object to him reading? He is just going to refer to some notes. If you have objection——

By the Witness:

A. Well, Mr. Andrews explained to me that he needed the help of a statisticiam. I was very busy, but he called me a number of times. He told me about the problem, and it seemed to me that it was important that somebody come and give him an opinion on certain aspects of the survey, any

aspect, and answer any question that anyone might have, so far as I can do so.

By Mr. Andrews:

Q. Under what terms and conditions did you accept this engagement?

A. I told you that I would wish to answer questions on [fol. 2962] all parts of the survey, and not restrict my answers to any one part; that I would like to take time to answer questions; that I would stay within my field of competence, and I would not attempt to answer anything that I was not able to answer.

Q. Just for the purpose of the record, Doctor Deming, do you own any du Pont stock?

A. Yes, sir, I own 20 shares. I purchased them in 1950.

Q. Do you own any General Motors stock, Doctor Deming?

A. Yes, sir; 50 shares, and I purchased them in the Fall of 1956.

Q. Also by way of background, Doctor Deming, could you tell me if you have ever done any work for National Analysts, the firm who prepared this survey?

A. Yes, sir, I have.

About five years ago, Mr. King, President of National Analysts, recommended me to a client to follow his sampling procedures in order that the client might be entirely satisfied with the whole survey.

On another occasion, Mr. King engaged me to give an independent opinion regarding a survey that he had made for a client, which there seemed to be some reason to go over the results and give him an opinion concerning some differences that had arisen.

Q. I see.

Doctor Deming, have you read Doctor Tepping's testimony in connection with this survey, and also studied his methods and procedures, as shown by his work papers?

A. I have, sir.

Q. What is your opinion of the procedure used by Doctor Tepping in conducting the survey?

A. Doctor Tepping's procedures form a probability sample with all that that implies; namely, that the estimates and the standard errors attached to them have the standard in-

[fol. 2963] terpretation not as matters of opinion but as mathematical consequences.

Q. Would you tell us, Doctor Deming, briefly, what is a probability sample?

A. A probability sample is one that is laid out, so that one may compute from the results themselves an estimate of the margin of variation that would show up in repeated application of that sampling procedure.

Q. Is there more than one method of probability sampling?

A. There are many ways to lay out a sampling plan so as to accomplish those aims. Two statisticians, were they to engage themselves on the same problem, would without doubt come up with two different sampling plans that might be more or less different. One might use stratification, and the other might not. One might recommend one kind of estimate, and one might recommend another. But the results of those two surveys would have the standard interpretation.

Q. Dr. Deming, if you need to look at notes to refresh your recollection, feel free to do so.

A. Thank you.

Q. Now, Dr. Deming, supposing a statistician, using a probability sample, came forth with a standard error of, let's say, one per cent for some characteristic that the survey is aimed to obtained an estimate.

What does this mean in relation to a complete coverage of the unigerse?

A. It means that were you to cover the entire list with the same care, same definitions, same handling of the questionnaires, same computations and rules, that you would differ from the result of the sample not more than three times that standard error that you mentioned, or three per cent, sir.

[fol. 2964] That, by the way, is an international standard used everywhere, that three Sigma rule is put forth in a document by the Society of Business Advisory Professions in New York, which is composed mostly of lawyers and accountants, who wished to have a statement on the matter.

It is also the substance of a standard that is being printed at this moment by the American Society for Testing Materials.

Q. You say that one per cent standard error means that if you repeat the sampling procedures, that you would come within three standard errors of getting the same result.

Now, does this mean that the estimate that you make from the responses would come within one per cent for the responses and non-responses combined, were you able to get figures from the non-responses?

A. No, sir, it does not. It does not include the non-responses, sir.

The standard error does not refer to the non-responses, to any persistent error that went through anything, through all calculations and through all the work. It does not detect or measure the effect of any persistent error or mistake.

I am sorry, sir. It does not include the non-responses that persist in one or more classes. If the non-responses are distributed through the whole sample, then the standard error does include the effect of non-response. The effect of non-responses in that case is a mere reduction in the size of sample.

The Court: The Court stands recessed.

(Whereupon a recess was taken in the trial of the above-captioned cause to 2:00 o'clock, p.m. of the same day, Wednesday, April 8, 1959.)

---

[fol. 2965] Before Hon. Walter J. LaBuy, Wednesday, April 8, 1959, 2:00 o'clock, p. m.

Proceedings resumed pursuant to recess.
Present: Same as before.

The Clerk: Case on trial.
The Court: Proceed, please.

W. Edwards Deming, a witness called on behalf of the Government in rebuttal, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination—(Resumed)

By Mr. Andrews:

Q. Doctor Deming, I think before lunch you had just finished a discussion of what probability sampling is and some of its properties. I would now like to ask you, with probability sampling does non-response by the various subjects that are intended to be included with the sample present a problem?

A. Yes, it does, sir.

Q. What can be the effect of non-response when it is present in a survey on the ultimate results of that survey?

A. Of course, it depends on where the non-response comes from. As I stated this morning, if the non-response is distributed at random throughout the whole sample, it does no harm except to diminish the size of the sample. It is a relatively harmless thing because the standard error measures the effect of it and there is never any doubt [fol. 2966] about exactly what you have; but if the non-response is concentrated in a class or two, or amongst one end of the spectrum, then there is a problem, of course.

Q. So, to the extent that there is a variation from one class of respondents to a like class of non-respondents, this does present a problem?

A. From one class of non-respondents to what?

Q. To a similar class?

A. Of a similar class?

Q. Yes, sir, if there is a variation in whatever the characteristic is you are trying to measure.

A. A similar class?

Q. Yes, or a like class.

A. Sir, I do not understand. A similar class would be one exactly like it. I do not understand.

Q. I was just trying——

A. Do you mean a different class?

Q. Well, a different class.

A. Like people who own 50 shares in one class and 200 shares in another class?

Q. Let's withdraw the question. I was just trying to bring out a point that you made by your last remark.

Doctor Deming, is non-response as a problem particularly acute when the survey is conducted by questionnaires sent through the mail rather than through personal interviews?

A. It is usually so, sir—not necessarily, but it certainly often is. It can be serious.

Q. Now, Doctor Deming, based on the studies and the evaluation you have made of this survey conducted by Doctor Tepping, and also the reading of his testimony, do you have an opinion as to whether non-response was a problem in this particular survey?

A. Yes, sir. It was. I should say so.

Q. And what is the basis of your opinion?

[fol. 2967] A. The basis is that the non-response could have been not uniformly distributed over the sample, but could have been more prominent in some classes than in others.

Q. I see.

Do you recall what the proportion of non-response was?

A. On a share basis, it was 33 per cent, I believe.

Q. Doctor Deming, I now hand you du Pont's Exhibit 17. I ask you if you are familiar with that exhibit?

A. I have seen it, sir.

Q. And on that exhibit, Doctor Deming, do you see a column—in fact, there are a number of columns, depending on the price of the stock that you take—which refers to tax rates for certain groups of stockholders?

A. Yes, sir.

Q. Do you see the first group, 1 to 100?

A. Yes, sir.

Q. Under "Individuals," I think it is.

Under the $2.00 bracket there, what is the tax rate for that particular group?

A. 29.8.

Q. Now, Doctor Deming,—of course, this is based on responses, is it not?

A. Yes, it is.

Q. Now, Doctor Deming, I would like you to assume that had responses been obtained from all of these respondents who did not respond, that such respondents would have

fallen in a lower tax rate than that particular figure that you have just named.

I would like you to tell me what would have been the result on that tax rate had they been included in this survey?

A. If the non-respondents are in a——

Q. Lower tax rate than—I think you gave me a figure 29?

A. If the non-respondents are in a lower tax bracket?

Q. Yes.

A. Then if you were to include the non-responses, know-
[fol. 2968] ing what their rates for these individuals that hold from 1 to 100 shares, the over-all rate for both respondents and non-respondents combined would be lower than 29.8; others vary.

Q. I see.

A. That is merely a simple problem in arithmetic. There is no statistical theory involved in there at all.

Q. Now, Doctor Deming, I would ask you to assume the converse situation, that the tax rate of the non-respondents, had they been included in this survey, would have been higher than that tax rate, what would have been the effect on the tax rate as shown there?

A. The effect would have been to raise the tax rate here from 29.8 to some figure higher.

Q. That is all with that exhibit.

Now, Dr. Deming, you have testified that non-response is a problem in probability sampling. I would now like to ask you what do you do when you have such a problem, when non-response is present in research. What would you do as a statistician?

A. Of course, a standard way to attack that problem, once you have it, is to try to get response from the non-respondents. A better way and a standard way of going about it is to take a sub-sample of non-respondents of perhaps one in two or one in three, with random numbers, and go after them, and try to get response from them, and thus to learn something about the non-respondents.

In other words, what one does is transfer them from non-responding groups to responding groups, and thus get rid of the problem. That is the best way.

Q. Now, in order to do this, to get the non-respondents

to become respondents, would it be required that you know [fol. 2969] the identity of all non-respondents; in other words, so that they could all be included in this sub-sampling?

A. Yes, sir, that would be necessary.

Q. Now, I would ask you to assume, Dr. Deming, that you did not know the identity of all of the non-respondents, such as I believe was the problem in this case.

A. You mean there is one per cent that you don't know, or a half per cent, or two per cent, or 50 per cent, or 90 per cent that you don't know?

Q. I would just ask you to assume that you would not know the identity of all non-respondents; I wouldn't say how large it was.

A. If one does not know the identity of some sizeable portion of the non-respondents, then the method that I just indicated would not entirely solve the problem, and one might still interview or get responses from all or a sample of those that he knew about; but he would still not have responses from those that were unknown, whose identity was not known.

Q. Would it be possible to take a sub sample of the non-respondents, not knowing all of the units that should be included in that sub-sample?

A. You could take a sub-sample of those who addresses you do know, but that would not solve the problem with respect to those whose addresses you do not know, those whose identities you do not know.

Q. Doctor Deming, assuming that you came to that point you have just discussed, that you do not know the identity of all non-respondents—what would you do then?

A. I must confess that the size of the number of names that were unknown, the number of identiteis unknown would have something to do with it. If it was only one per cent [fol. 2970] of the non-respondents, say, the client might decide that he wouldn't worry about it; but if it is half of the non-respondents, I think it would be a real problem.

Q. So that it depends on how large this is?

A. Yes. It would not be my decision, but I think I know how the client would handle the matter. I might even help him with some of the arithmetic. It would not be my decision, but I think I know what he would do.

Q. What would you do as a statistician if you ruled out a possible sub-sample because there were so many of the non-respondents whom you did not know the identity of and you could not include in such a sub-sample? Assume it was a large amount, 50 per cent or so.

A. One has then before him recourse to assumptions that he might make with respect to the non-respondents. However let me say before I go on, that those assumptions would be beyond my ability, sir. I would not make the assumptions; but the client would have to make assumptions about the non-respondents. That would be one way out—to make assumptions about the non-respondents.

Q. I think you have described, in general, two methods of dealing with this problem. Are there any others that you can recall?

A. I don't think of any others right now.

Q. Doctor Deming, did you read Doctor Tepping's testimony on how he handled this problem of non-response?

A. Yes, sir.

Q. As it is given in the transcript at pages 2425 through 30?

A. Yes, sir, I did.

Q. Could you describe in general what this method was?

A. He classified the non-respondents in several ways, having some information about them; whether they were individuals or beneficiaries. He classified them according [fol. 2971] to information that he had about them and imputed to them the tax that the respondents in the same group had—imputed to them the same tax rate that the respondents in the same groups had shown.

Q. Do you have an opinion as to the adequacy of these assumptions made by Doctor Tepping?

A. No, sir. I would not wish to make a statement. I don't believe that I am qualified to make a statement, sir.

Q. Why not, Doctor Deming? What qualifications would this take? Perhaps that would be a better way of putting it.

A. I would feel qualified to handle problems in sampling and interpretation of results from samples; but when it comes to making assumptions or passing judgment on somebody's assumptions about this subject, I don't believe that I am qualified. My education and experience would not help me there.

Q. I see. Dr. Deming, is there anything in statistical theory, mathematics, or sampling techniques, that would tell a man how to make this imputation that was made by Dr. Tepping?

A. None that I know of, sir.

Q. Now, Dr. Deming, I would like to ask you your opinion as to whether you would have treated the problem of non-response that was present in this survey in the same-manner as Dr. Tepping?

A. Well, sir, I would not have done it on my responsibility. I would have made somebody else responsible for it, and then I might be able to carry out the arithmetic.

Q. Dr. Deming, is there an allowable magnitude of non-response that can be present in a survey, such as 10 per cent, 20 per cent, 30 per cent?

A. No, sir. I think it is very hazardous to name any figure, because it depends on where the non-response comes [fol. 2972] from. As I said, if it is distributed uniformly, say, at random throughout the whole sample, it does very little harm; it does no harm at all, because the standard error will tell you the effect of it, will include the effect of it, and there is never any doubt about the sampling precision. But when the non-response is concentrated in a class or in several classes, say, predominantly distributed amongst selected classes, then it is more serious, and the more it is concentrated, the more serious it can be, so it is impossible to say that any figure is acceptable. It depends on where it comes from.

Q. Dr. Deming, I would like you to assume that you had to deal with the same problem that Dr. Tepping had when he made his imputation here, and I would like to ask you, as an expert, what assumptions would you have made about these non-responses, as an expert in the field of statistics.

A. I would not have made any. I am not competent to make any. I would have stopped right there and handed the results to the client and told him about the non-response; and let him make his assumptions, and be responsible for them. I could help him with the arithmetic from then onward, but he would have to take the responsibility for the assumptions, because I just wouldn't do it.

Q. Dr. Deming, I would like to hand you du Pont Exhibit 23-B, and ask you if you are familiar with that exhibit.

A. I have seen it, sir.

Q. Now, I would also like you to turn to the transcript, on Page 2439. I would like you to read beginning with the paragraph at the bottom of the page, which is "The dotted line and solid line in each case are very close together."

Do you have that paragraph?

A. Yes, sir.

[fol. 2973] Q. I would like you to read from there on through the question and through the next answer. Then I would like to ask you a question.

Could you read it aloud?

A. (Reading):

"The dotted line and the solid line in each case are very close together in spite of the fact that especially for beneficiaries of the trusts, there is a substantial increase in the number of shares represented by responses"

"Q. What conclusions do you draw from a comparison of the results of the preliminary and final tabulations, as set forth in Exhibit 23-B?

"A. I draw the conclusion first of all, that if we had extended the period of the survey so as to allow more responses to come in, we would not greatly have changed the estimates for that part of the population represented by the responses."

Q. Now, Doctor Deming, I would ask you on the basis of the record that you have before you whether you would come to that same conclusion?

A. Well, not on the basis of this alone, though this exhibit certainly points in that direction and the figures that he quotes.

Q. Why wouldn't you?

A. I should need to draw on other experiences. You are asking me if this alone would suffice?

Q. Yes. The record as you have had it, your reasons——

A. Well, not this alone. One would need to draw on other experience of his own and published experience, of which there is a considerable amount in existence.

Q. Are there instances, perhaps, where the last 5 or 10 per cent of responses might have changed the results of his survey?

A. Will you read the question, please?

[fol. 2974] Q. I will rephrase it, Doctor Deming.

Are you aware of any instances where the results of the survey would appear to have been greatly influenced or changed by the last 5 or 10 per cent of the responses received?

A. I cannot cite any. I am unable to cite any, but I think that there is at least one example and maybe more. I am unable to tell you where it is. I do not know if it was published or if some colleague mentioned it to me. I cannot cite it, sir.

Q. Now, Doctor Deming, I think you have examined some of the du Pont exhibits, I think with reference to Exhibits 24, 25 and 26, in which the responses, the representative shares, tax rates, et cetera, were totaled for both responses and non-responses. Do you recall those exhibits?

A. Yes, sir.

Q. Doctor Deming, I would like you to give an opinion as an expert in sampling and statistical theory as to whether or not you regard those estimates as being accurate?

Mr. Gribbon: Which estimates are these now?

Mr. Andrews: The ones contained in Exhibits 24, 25 and 26.

Mr. Gribbon: He is answering all three of them at the same time, Exhibits 24, 25 and 26?

Mr. Andrews: Yes.

By the Witness:

A. The estimates there——

By Mr. Andrews:

Q. I am referring to the exhibits in which both responses and non-responses were added together, and he [fol. 2975] came out with a result.

A. The figures are, of course, influenced by the assumptions that went into the classification of the non-responses and the tax rates attributed to them.

Q. You are unable to pass——

A. If you were to change the assumptions, you would get different figures in those exhibits that you mentioned.

Q. So as an expert statistician or an expert in the sampling field, you could not pass on the accuracy of these estimates?

A. No, I could not. There is no theory that I know of that would enable me to evaluate the uncertainty there that arises from the assumptions made with respect to the non-responses.

Mr. Andrews: I have no further questions of Doctor Deming.

Cross-Examination.

By Mr. Gribbon:

Q. Doctor Deming, I am one of du Pont counsel in this case, and I might say I am rather ignorant about these matters you are discussing. All I know I have learned from Doctor Tepping.

He, by the way, was a colleague of yours, wasn't he?

A. Yes, sir.

Q. Didn't you work together in the——

A. We certainly did, and I am very happy about it.

Q. When did you work with Doctor Tepping?

A. I was in the Census, beginning in 1939, and as I said in my direct testimony this morning, I was responsible for the sampling in the population division, and I came to know Doctor Tepping and to appreciate him. He helped me, and we became very good friends and colleagues, and I have very high regard for him.

[fol. 2976] I have received a lot of help from him. I have gone to him on a number of occasions for exchange of ideas and for help, and I have found him to be very good. I think a lot of him.

Q. Have you ever had occasion to take exception to his sampling techniques and statistical methods?

A. No, sir. We might use different procedures. Naturally, I think that mine are a little better, but there was never the slightest doubt about the validity of any of his procedures or any of his estimates nor any of the statements that he made with respect to the responses.

Q. You have examined all of the exhibits relating to the National Analysts survey of du Pont stockholders?

A. Well, sir, I had the opportunity.

Q. You won't quite own up to having examined them all, is that it?

A. I think that I have examined them all.

Q. You have? Have you examined all of Doctor Tepping's testimony?

A. Oh, sir, I have examined only Doctor Tepping's testimony and exhibits that he put in.

Q. Yes, I understand that.

A. Yes, sir.

Q. You have examined his entire presentation on this stockholder's survey?

A. Yes, sir.

Q. Did you examine the testimony that Doctor Tepping gave last Wednesday in this court?

A. No, sir, I have not.

Mr. Andrews: That was in relation to the exhibits. I think you did examine it.

The Witness: I did examine it?

Mr. Andrews: Yes. I will be glad to show it to you to refresh your recollection.

[fol. 2977] By Mr. Gribbon:

Q. You have not prepared a survey of your own in this matter?

A. In this matter?

Q. Yes.

A. Oh, no.

Q. You were not asked by the Government to prepare a survey?

A. No. I examined Dr. Tepping's testimony and exhibits.

Q. You understand, then, that Doctor Tepping's exhibits and his survey fall into two quite distinct categories, what we have referred to as a statistical estimate which covers all of the people who are represented by responses to the survey, and what we have labeled the non-statistical estimates covering those people who were included in the survey but for whom responses were not obtained?

A. It certainly is clear in Doctor's Tepping's testimony.

Q. You understood that to be the case?

A. In his testimony it is very clear.

Q. Yes. Now, I believe that Exhibit du Pont 17, to which you referrred in your direct testimony, covers the first part of a statistical estimate that Dr. Tepping made.

Would you mind referrring to that exhibit, please? I believe you have a copy there.

Do you recognize Exhibit 17?

A. Yes, sir, I have seen it.

Q. You have examined that before, haven't you?

A. Yes, sir.

Q. And this is the result of Dr. Tepping's survey and represents his statistical estimate with respect to the effective tax rate and taxes payable by shares represented by survey responses?

A. It says so, sir.

Q. Could you tell me what, if any, reservations you have with respect to accepting these figures in Exhibit 17, based on your examination?

A. None, sir.

[fol. 2978] Q. None whatsoever?

You mentioned in your direct examination—you may correct me if I am misstating this—but I understood you to say something about the possibility of non-responses affecting the statistical estimate if there were a distortion in the non-responses, if they were concentrated in one end of the spectrum. Do you recall that?

A. Yes, sir.

Q. Do you find any evidence of that in this survey?

A. Sir, I think if you would give me a few minutes, I could find the spot where there were more non-responses in the lower holdings—I am not positive about it, but there is something about it here and there in Dr. Tepping's testimony, and I cannot refer you to the page, nor say exactly what it was.

Q. Do you have some opinion, based upon what you do remember, that there is a distortion in the non-responses; that they are more heavily concentrated some places than in other places?

A. I wouldn't say they were concentrated, but not evenly distributed, as I remember from reading, but I am only remembering, and if you wish me to, I will find the place, but I don't know how long it would take.

Q. Well, do you wish to suggest to the Court that there is any reason to believe that the statistical estimates set

forth in du Pont Exhibit 17 are unreliable because of any such distortion in the non-response rate?

A. I make no statement about it. Exhibit No. 17 refers to responses.

Q. Yes.

A. And I say nothing beyond that. I do not know about the non-responses. I have no qualifications for making a statement about any assumptions nor allocation of those non-responses.

[fol. 2979] Q. Well, I was trying to hold that one for just a minute and ascertain whether you feel there is any reason in the non-response side of the picture to doubt the figures that are set forth in du Pont Exhibit No. 17, which is confined to the response side of the picture?

A. If you are referring only to responses——

Q. Right.

A. I gave you my answer.

Q. All right.

A. I have no reservation about it.

Q. Thank you. I believe, Doctor Deming, you stated that non-responses are more serious in mail surveys than in personal interview surveys; did I correctly understand you?

A. I did not mean to say that. It is usually so. It is not always so.

Q. It would vary depending upon the nature of the survey?

A. The nature of the survey, yes.

Q. Now, if you would, please, would you direct your attention to the non-response area of the exhibits that were introduced by Dr. Tepping? I believe that you will find du Pont Exhibit 22 estimates the tax that would be payable by the shares that are not represented by respondents to the survey. Do you you recognize Exhibit 22?

A. I have seen it, sir. I think I would know what you mean.

Q. And, as I understand it, it is solely this portion of Doctor Tepping's work to which the reservations that you have expressed on direct examination apply?

A. I have stated that I have no qualifications for forming a judgment here, nor giving you any opinion that you could use.

Q. Right; you are not saying this is wrong or right, you simply are not expressing a judgment?

A. I am not expressing a judgment. I will say neither right nor wrong. I will not answer at all.

[fol. 2980] Q. As I understood your testimony, you as a statistician would prefer not to make the imputations which Doctor Tepping has made here?

A. I will not make them.

Q. You will not make them?

A. That is right.

Q. Supposing you were faced with the problem of arriving at an estimate for a group of non-respondents here. Can you suggest any means by which such an estimate could be obtained?

A. There is nothing that I know that would help me through that problem.

Q. Do you know of an expert in any field who might be qualified to approach this problem?

A. Sir, imputations and assumptions are substantive. They are not objective. The imputations or assumptions have to be made by knowledge outside of what is contained in the survey itself, and in my own practice I do not do that.

I have no qualification for making any assumptions or imputations for the non-respondents in this survey, nor probably in any other, and I do not make them.

I take them to the client or to the man responsible and let him do it, or engage expert assistance to act for him, whereupon I may finish the arithmetic and make up tables for him with the proper safeguards and labels and warnings on interpretations if he asks me to do it.

Q. And you spoke of the client enlisting expert assistance. What character of expert assistance do you have in mind?

Mr. Andrews: Are you referring to this particular case?

Mr. Gribbon: The immediate statement that Dr. Deming just made.

[fol. 2981] By the Witness:

A. It would depend on the subject matter of the survey. In this case, it would be a man who knows enough about

income and taxes and holdings to make it and sign his name to it.

By Mr. Gribbon:

Q. Well, now, you appreciate the intimate knowledge of this matter that Dr. Tepping must have obtained in conducting this survey, don't you?

A. I certainly do.

Q. It is really quite a bit of work that is involved, is it not?

A. It must have been tremendous.

Q. Would you say that Dr. Tepping would not be qualified to give this expert assistance to the client that you have just mentioned?

A. I could not say he is not qualified.

Q. You are really saying that you would not want to do it?

A. I am only saying that W. Edwards Deming would not do it.

Q. Would Dr. Deming condemn another statistician who did it?

A. No, sir, Dr. Deming did not.

Q. And a number of other statisticians would do it, would they not?

A. I would condemn—yes, the answer is yes, and I would condemn any of them that did it on insufficient knowledge.

Q. Do you think that, considering the problem he was faced with, that Dr. Tepping did this on insufficient knowledge?

A. I make no such statement.

Q. All right. You understand, of course, that Dr. Tepping made it very clear in his testimony that he was not holding this out as a statistical estimate, one that could be proven by mathematics?

A. He made that very clear.

[fol. 2982] Q. Very clear. Did you mean to suggest in any way that Dr. Tepping did not attempt strenuously enough to turn non-respondents into respondents?

A. No, sir, I did not say that, nor had I any such idea in my head. I know that he must have made every possible effort, I believe, without even reading the testimony. I would hazard that statement.

Q. You, I suppose, have seen a number of the exhibits which represent correspondence?

A. Yes, I know about it.

Q. And follow-up letters?

A. I know about it.

Q. Do you see anything else that might have been done to increase the rate of response?

A. No, sir.

Q. Some reference was made as to the advisability of taking a sub-sample, I believe. Do you recall that testimony?

A. Of non-respondents?

Q. Yes.

A. Yes, sir.

Q. Are you familiar with the reasons why Dr. Tepping did not take such a sub-sample?

A. He could not.

Q. Pardon?

A. He could not.

Q. He could not?

A. No.

Q. That is a fairly effective reason, is it not?

A. Yes, sir. That is why I have said I know of no way in which he could have increased the response.

Q. What?

A. I do not know of any way.

Mr. Andrews: Here is the transcript. You can look at it and see if you have read it before.

Mr. Gribbon: I believe that is all the questions I have, your Honor. Thank you, Dr. Deming, for your patience.

[fol. 2983] Redirect Examination.

By Mr. Andrews:

Q. Dr. Deming, referring to the question Mr. Gribbon asked you, if you had examined the last day's testimony of Dr. Tepping, I would like you to look at it and see if you recognize it, as having examined it.

A. Yes, sir, this is one of the documents that you handed to me.

Q. Dr. Deming, I think it was brought out on cross-examination that you did not mean to say that Dr. Tepping

did not make all-out efforts, or what have you, to obtain answers to the non-responses or to deal with the problem.

Now, I would like to ask you, what difference would it make what efforts were made or were not made to obtain the non-responses? Does that improve the accuracy of your survey?

A. No, sir. What counts is what happened.

Q. Even though you appreciated his problems?

A. I appreciate the problem, yes.

Q. Now, Dr. Deming, I think you testified that you would not state that Dr. Tepping was not qualified to make his imputations; I would ask you the converse question: Do you know that he is, from the record that you have read?

Mr. Gribbon: If your Honor please, I suggest that that is not a proper question to ask this witness. The qualifications of both witnesses are on the record, and the bases on which the assumptions were made.

Mr. Andrews: I will stand on the record, your Honor.

The Court: Sustain the objection.

Mr. Andrews: I withdraw the question.

Q. Doctor Deming, you were asked if you could suggest any means whereby you could have handled this problem [fol. 2984] of non-response and obtained the required information, and I think your testimony was that you could not or did not know of any.

A. Sir, would you repeat that?

Q. In other words, you had this problem of non-response in this survey. Doctor Tepping handled it by imputing these values to it that you have testified about. I think you were further asked if you could suggest any other way that this could have been handled other than this way. Do you recall that, on cross examination?

A. I don't remember, but I can answer the question.

There must be different kinds of assumptions and kinds of imputations that one may make, surely.

Q. And would these assumptions or imputations that you made be based on statistical theory or mathematics, or just what? Is there any such theory that would come under statistics or mathematics that would allow you to make an assumption?

A. The answer is no. Doctor Tepping said that, on some page that I cannot refer to at the moment.

Q. Now let us assume, Doctor Deming, that you tried all of these alternatives of trying to get at the non-response; however, you were unable to do so; and whether out of desperation or what have you, you go ahead and impute these values. Would this make any difference as to the ultimate accuracy of these imputations, the fact that you have gone to all these other means, and there is no other way available? Does this improve the accuracy?

A. No. What counts is what happened; not the effort that went into it, but what happened.

Q. Now I think you stated, you testified, Doctor Deming, that you would accept the figures on Exhibit 7 without any reservations. That was your testimony, I believe, on cross.

A. As labeled for the responses, yes.

Q. Now, Doctor Deming, I would like you to assume that [fol. 2985] one of the objectives of this survey was to obtain the tax rate that stockholders of du Pont would fall in for those particular groups; not the ultimate taxes that would be paid, but the tax rate. Do you follow that assumption?

A. The tax rate?

Q. Yes.

A. Yes, sir.

Q. This was one of the matters in controversy. I would like you also to assume that. Then I would like you to give me your opinion as to whether you could still accept the tax rate that is there, in view of the non-response that was present.

Mr. Gribbon: I object, your Honor. It is beyond the scope of cross.

Mr. Andrews: I think you asked him if he had any reservations about the figures on Exhibit 17.

The Court: Overruled.

Mr. Gribbon: In the question you have given two new assumptions that were not in the picture, that you didn't ask him about on direct.

The Court: He may answer.

Mr. Andrews: Will the Reporter please read the question?

(Question read.)

By the Witness:

A. Well, sir, I cannot answer the question as stated, because Exhibit 17 is labeled "Represented by Survey Responses."

By Mr. Andrews:

Q. I see. So as labeled, you would have no reservations?

A. If you are asking me about something else——

[fol. 2986] Maybe you could make the question clearer. I do not understand it.

Q. What I was referring to, Doctor Deming, was where I asked you earlier on my direct examination as to what if the assumption was made that the non-response surtax rates were lower than the tax rates you see there. If the tax rate was one of the matters in controversy, would you accept this figure without any reservation, knowing that this non-response existed, without going into the non-response——

A. Would I accept this exhibit?

Q. Yes.

A. As labeled, yes.

Q. Because it clearly says it is?

A. It says, "For Survey Responses."

If you are asking me about non-responses, then maybe you could frame the question—

Q. I don't mean to ask about non-responses. I was just wondering what effect this would have on your opinion of these figures if you know that this non-response existed and that had it been included in this survey that it might have been a lower tax group, that this was one of the matters in controversy?

A. I can say that if the non-responses of individuals that owned between 1 and 100 shares was lower than the tax rate shown here, namely, 29.8, then the combination of the two, responses and non-responses, would be a lower figure—the same statement that I made some time ago. I have no reason to change it.

Mr. Andrews: I have no further questions.

The Court: Any further questions?

You are excused.

(Witness excused.)

[fol. 2987] ERWIN FRIEND, previously called as a witness on behalf of the Government, having been previously duly sworn, was recalled, examined and testified further as follows:

Cross-examination—(Continued)

By Mr. Cox:

Q. Mr. Friend, do you have a set of the work papers you had with you the other day when you were testifying on direct examination?

A. I have some work papers with me. I am not quite sure they are the same.

Q. I was referring to the ones you used on your direct testimony on Monday.

A. I think these are the same ones, yes.

Q. Perhaps we can save time also if I give you a stenographic transcript of your testimony.

Mr. Reycraft: Mr. Cox, were you referring to the work papers which were offered in evidence?

Mr. Cox: Some of them, yes.

Mr. Reycraft: Mr. Cox, may I suggest that I offer these exhibits at this time in order to complete the set of work papers? Copies were given to you this morning.

Mr. Cox: Very well.

Mr. Reycraft: These are exhibits 669, 670, 671, 674 and 675.

Mr. Cox: No objection.

The Court: They are received in evidence.

(Said documents, so offered and received in evidence were marked Government Exhibits 669, 670, 671, 674 and 675.)

[fol. 2988] By Mr. Cox:

Q. I think it might be helpful if you had a stenographic transcript of your testimony of last Monday.

A. Is this two days ago?

Q. Two days ago.

Professor Friend, is one of the papers you have with you the price chart on the prices of A & P in connection with

the secondary offering, the document that is marked Government's Exhibit 672 for identification?

A. No, it isn't. You see, when you asked me whether I had my work papers, I thought you meant a couple of scribbled notes that I had with me on the stand. These were work papers which Mr. Reycraft handed up.

Mr. Cox: I was talking about the set of tabulations, Mr. Reycraft.

Mr. Reycraft: It was offered in evidence—which I am getting for him. Would you like to have him see that, in the meantime?

Mr. Cox: I will see if I can find another copy for him.

(Document handed to witness.)

Q. Professor Friend, let me direct your attention to a passage at Page 2741 of the printed transcript of your testimony on Monday, at which you were asked some questions about the price movement of A & P's common stock in relation to the recent secondary offering.

In the middle of that page, you were asked:

"And what do the data which you have examined show with respect to the price movement one month prior to filing, up to the filing date."

[fol. 2989] The answer was:

"For one month prior to the filing up to the offering date, you find that whereas the Dow-Jones went up, oh, about four per cent, A & P declined at about the same amount."

Then lower on the same page you said as you have indicated above, the percentage figure comes to something in the order of eight per cent.

Because of the difference between the form of the question and the form of the answer with respect to dates, I thought perhaps we should try to straighten that out.

Would you look, please, Professor Friend, at this A & P price chart that you have before you?

A. Yes.

Q. February 4th, I believe, was one month prior to the date of the filing of the prospectus, was it not?

A. Yes.

Q. And the closing price on that day was $48?

A. Yes.

Q. The filing date was, I believe,—does your document show what the filing date was? It was March 4th, wasn't it?

A. March 4th, yes.

Q. And the closing price on March 4th was $46.26, is that correct?

A. Yes.

Q. Can you tell me, roughly, what that percentage decline is there?

A. On a 48 basis, it would be a little over four per cent. You want this very rough, I take it?

Q. Yes. Then the Dow-Jones industrial average between the same dates moved in what way?

A. Moved up.

Q. Can you give me a percentage?

A. Let's see, that would be a little over twenty——

The Court: Keep voice up, please.

By the Witness:

A. I didn't want to keep my voice up until I was able [fol. 2990] to answer the question. I was doing a little mental arithmetic, I am sorry.

It is a little better than three per cent.

By Mr. Cox:

Q. So that that is the seven per cent figure that you were talking about?

A. No, not at all.

Q. It isn't?

A. No. If you will refer to the question, the question says:

"And what do the data which you have examined show with respect to the price movement one month prior to the filing up to the filing date?

Q. Wasn't February 4th the date one month before the filing date?

A. I am sorry. I apologize. I am confused by the fact that in one case the offering date is mentioned, and in the other—

Q. I think that is what created the confusion.

A. It is confusing. That is right.

Q. I think this is the seven per cent figure?

A. Right. I am sorry.

Q. Now let me ask you these questions. Looking again at February 4th, which is the one month prior to filing date—the offering date was the 24th, was it not, March 24th?

A. Yes.

Q. Now this schedule shows that the closing price on March 24th was $44.65, was it not?

A. That is right.

Q. Am I right when suggest to you that that represents a percentage decline of a little more than 7 per cent?

A. From which date?

Q. From the one month before the filing date to the 24th.

A. Yes.

Q. Now in the same period of time, that is, from the [fol. 2991] 4th of February to March 24th, the filing date, can you tell me from that exhibit how the Dow-Jones average moved?

A. The Dow-Jones industrials moved up between 17 and 18 dollars on a base of not quite $600, which would make it up 3 per cent.

Q. So that you get a total percentage figure there of somewhere between nine and ten per cent, roughly, is that correct?

A. That is correct.

In the response I gave, I made the rough estimate that for one month prior to the filing up to the offering date, you find that whereas the Dow-Jones went up about four per cent, A&P declined in about the same amount.

There was some confusion in view of the question that was raised. But actually, that would amount to about 8 per cent differential.

Q. Eight per cent between the one month before the filing date and the filing date?

A. Yes.

Q. And somewhere between nine and ten per cent for

the period of time from one month before the filing date to the offering date?

A. Yes.

Q. Taking as a basis for that last computation the closing price on March 24, which was the offering date, and that closing price was $44.65. Now, in fact the offering price was $44.50, was it not, Professor Friend?

A. Yes.

Q. So on the basis you compared the closing price on February 4th with the offering price on March 24, taking into account the same factors, the percentage decline would be slightly more than ten per cent, would it not?

A. I find it difficult to do that precise arithmetic in my head, but it is about that dimension.

Q. I compute it to come out at 10.24 per cent.

A. I will take your word for it.

[fol. 2992] Q. No wat the same passage in the transcript, Doctor Friend, this is on Page 4645——

A. I am sorry. What page?

Q. I am reading the wrong page, because that is a reference to the stenographic and not the printed transcript. This is on the same page, I think, that we were before, and it is a little farther along in the examination.

It is at the foot of Page 2741, where you say, "Well, it depends so much on the date one picks that I would say that the net difference that I indicated just a moment ago, which would amount to something of the order of 8 per cent, would probably not be changed too much if you go back another month."

Now Government Exhibit 672 does not go back earlier than the closing price on January 19?

A. That is correct.

Q. If you compare the price of $50, which was the closing price on January 19, with the offering price of $44.50 on March 24, there is, is there not, a percentage decline in the order of about 11 per cent?

A. I think that is about right.

Q. And in the same period the Dow-Jones average moved from 594.40 to 606.73, which is a percentage increase of about a little more than two per cent?

A. That sounds right.

Q. So that in this case the total percentage figure comes out around 13 per cent?

A. Yes. I might add that it depends on precisely what date you pick. It is my impression, for example, if you were to pick any date in January, of those dates shown here, beyond the first several, you would arrive at a rather different answer, because A&P shows a significantly different and a greater price decline over January than did the Dow-Jones industrial average.

[fol. 2993] Q. Yes. Well, that might be interesting to do. Do you have any idea what the average price of A. & P. was in the month of January?

A. The average price? No, I do not, except insofar as I can compute it from January 19 to the 30th.

Mr. Cox: I would like to have this document marked for identification du Pont Exhibit 60.

(Thereupon said document was marked Defendant du Pont Exhibit 60, for identification.)

By Mr. Cox:

Q. Doctor Friend, this is a tabulation of the high, low and closing prices of A. & P. for the complete month of January, together with the closing figures of the Dow-Jones industrial average taken from the Wall Street Journal.

No average price for this period of time has been shown on this tabulation, and I wouldn't presume to ask you to try to do that on the stand.

I have asked to have an average price computed, and the result of that computation, at least the one made for me, shows that the average closing price in the month of January was $51.16.

Could you, by looking at the prices, have any judgment as to the accuracy of that figure?

A. No, I don't. It is clearly within a 10 per cent range.

Q. Let us assume for the time being that it is an accurate figure, Doctor Friend, if you will.

A. Surely.

Q. I also point out to you, as I said a moment ago, that this tabulation shows the closing Dow-Jones industrial average for January, and I will ask you to assume that the [fol. 2994] average of the Dow-Jones industrial average for that month was 592.29. That is another computation that I have asked to have made for me.

Now, if you should compare the average price in January, which we have assumed to be 51.16, with the offering price of $44.50 on the 24th of March, as shown on Government Exhibit 672, and also take into account the difference between the average of the Dow-Jones industrial average in the month of January and the Dow-Jones industrial average on March 24, you would arrive at a percentage figure of about 15½ per cent.

That computation rests, would it not, at least upon an average of prices in the month of January as the basis?

A. If your computations are right, assuming that they are, it would, sure.

Q. That would be somewhat larger than the 13½ per cent figure we arrived at by using the one day in January?

A. I agree. I might say, since I want to be completely fair about this, that if you were to confine your attention to the period which several du Pont witnesses have suggested as most relevant, namely, the one month before, the relative decline would be less than this and, in my impression, no greater than 8 per cent as I indicated in terms of the two particular days I discussed in response to Mr. Reycraft's question.

Q. Different periods of time have been used by different witnesses for different purposes in this proceeding.

A. Yes, and as a matter of fact, I am willing to say that any reasonable time of comparison should be considered.

Q. I suppose reasonable men might differ about what the period is?

[fol. 2995] A. That is why I was extremely careful to stipulate the same time period for all the stocks I was interested in comparing; otherwise, you can get pretty much any result you want.

Q. As a matter of fact, in the month of December, 1958, the price of A & P had been higher than it was in January?

A. When?

Q. In the month of December, 1958. Do you recall that at one time it reached a high, I believe, of 58 in the month of December?

A. Well, as I recall, several things happened to A & P in the latter part of 1958. I am not now posing as an expert on A & P, but you did have a 10-for-1 split; you did have the listing on the New York Stock Exchange. This might—I am not saying it did—this might very well have

driven the price up to a higher level than is warranted in comparison to other stocks. Therefore, over this period you might expect a larger decline than otherwise might appear to be warranted relative to other stocks.

Q. Have you ever heard it suggested, Professor Friend, that some of those steps that were taken with respect to the A & P stock in December and early part of January also suggested to the financial community that there was going to be a secondary offering of the stock?

A. I don't recall that.

Q. Did you read the testimony of Mr. Lenz in this case?

A. Only that which had to do with his statement of price impact of offerings of given dimensions.

Q. I should like to call your attention to a passage in Mr. Lenz' direct testimony, which is found at Page 2324 of the record, where he was asked this question:

"Q. Is it true in your experience it is usually known in the financial community sometime before registra-
[fol. 2996] tion statement is filed, that there is going to be a large offering of that stock?'

A. Quite frequently. That is one of the most difficult problems to cope with as to estimating when the knowledge is first bruited about. In the case of the Great Atlantic & Pacific Tea Company, the company appointed the Guaranty Trust Company quite some months ago as transfer agent, which indicated to most people that they contemplated an offering. This was followed by the stock split, which I think also was a further tip-off that such an offering was about to take place at some near future date.

"This is a somewhat unusual case in that in most instances the knowledge of the impending transaction is limited to only a very short period prior to the offering, whereas in this case it was a matter of quite some months and no one knew the definite amount or when it would come, but they were pretty sure that such an offering was coming to the market."

Do you have any reason to doubt the accuracy of Mr. Lenz' testimony in that respect?

A. I would take his word for it. I don't think he gives evidence there which is completely relevant.

Q. But you would take his word for it?

A. Yes. Let me say I assume you would also appoint a transfer agent in connection, perhaps, with listing on the New York Stock Exchange. I don't know, but I am perfectly willing to take his word for it.

Q. His word, perhaps, was indicative of the state of mind of the financial community, whether the reasons were good or not, perhaps?

A. Yes, surely.

Q. I think, as a matter of fact, if my recollection is [fol. 2997] correct, he mentioned in an earlier passage the listing on the stock exchange in the same context.

Now, let me change the subject, Dr. Friend, and direct your attention to some testimony you gave about the recent secondary offering of the stock of the Ford Foundation. That, I believe, is page 2744 of the printed transcript. I believe that one of the documents you have is a price tabulation on the Ford stock. That has been marked Government Exhibit 673 for identification.

A. I am afraid I do not have that, either.

Mr. Reycraft: Which one is that?

Mr. Cox: That is 673, Mr. Reycraft.

By Mr. Cox:

Q. Do you recall, Professor Friend, the date of the filling of the registration statement?

A. March 12th.

Q. Do you recall the date of the offering itself?

A. March 31st.

Q. Do you recall that prior to March 12th, when the registration statement was filed, that there had been rumors on Wall Street that there was to be a large secondary offering of Ford stock? Did you ever know anything about that?

A. I have a vague recollection.

Q. Well——

A. Of course, there have been periodic rumors of this sort for a long time.

Q. Well, do you now recall, or did you have any knowledge at the time, that those rumors appeared in a specific form in the press on the 5th of March?

A. Was that the Wall Street Journal?

Q. Yes, and the Dow-Jones Ticker.

A. I have a vague recollection, not the timing but that it occurred.

[fol. 2998] Q. Your recollection is not clear enough to associate it with the date of March 5th?

A. No.

Q. Do you also recall, Professor Friend, that beginning early in March and continuing through to the end of that month, that there appeared in the press, the financial press and the daily press, a series of news stories containing favorable news in respect to the financial prospects and earnings of the Ford Motor Company?

A. That is correct.

Q. Now, in your testimony with respect to the Ford offering, at page 2745 of the stenographic transcript, you made a reference at the foot of the page, Professor Friend, to the offsetting factors in the case of the Ford offering; do you see that?

A. Yes.

Q. Would you regard these favorable fiancial reports in the press throughout the month of March as an offsetting factor which may have affected the movement of price in connection with the secondary offering?

A. I thought I so stated.

Q. Well, that is one of the things you had in mind, wasn't it?

A. Yes.

Mr. Cox: Mr. Reycraft, you introduced this morning, I thing, a copy of the Ford prospectus. Do you have that?

Mr. Reycraft: There it is (indicating.)

By Mr. Cox:

Q. You testified, I think, the other day, at 2746 of the transcript, that there was a statement in the Ford prospectus with respect to the possibility of additional sales by the Ford Foundation, Dr. Friend?

A. Yes.

Q. This morning the Government introduced in evidence [fol. 2999] a copy of the prospectus. I do not have the exhibit number, but——

Mr. Reycraft: I do not either, Mr. Cox. I am sorry.

Mr. Cox: I believe it is Government Exhibit No. 679.

By Mr. Cox.

Q. On Page 25 of that document, under the heading, "The Selling Stockholder," there is a sentence, "The foundation may from time to time sell further portions of its holdings of stock of the company."

Is that the statement to which you referred?

A. Yes.

Q. Would you like to look at it to be sure?

A. Yes. Do you have it marked?

Q. It is there under the heading, "The Selling Stockholder." It is about the third or fourth line down.

A. I see that.

Q. That is the statement that you referred to in your direct testimony on Monday?

A. Yes.

Q. Professor Friend, in your opinion as a student of security markets and security practices, do you think that is an appropriate provision in this case to be included in the prospectus?

A. I don't understand the question.

Q. Do you think that statement in the prospectus serves a useful purpose? Let me put it that way.

A. I think it does, yes.

Q. Why do you say that?

A. I think it is desirable for a stockholder buying a new offering to be made cognizant of all relevant facts, and I think that is a relevant fact.

[fol. 3000] Q. That is a relevant fact, that there might be additional sales?

A. Yes.

Q. Whether it affects his judgment or not, it might affect his judgment, and he is entitled to know it, in your opinion, is that correct?

A. Yes.

Q. Now, do you understand, Professor Friend, that the Ford Foundation is under no legal compulsion at any time to sell any additional shares?

A. I understand that.

Q. They may sell as many as they like tomorrow, on the other hand, they may wait for twenty years before they sell any?

A. Yes.

Q. Do you know whether there was a similar statement of that kind contained in the Upjohn—I am sorry, in the A&P prospectus?

A. I don't recall.

Q. I don't recall either, but, in any event, the fact that there might be additional sales by the owners of A&P stock again would be a matter of interest to prospective purchasers of that stock?

A. Certainly.

Q. And do you similarly understand with respect to the Hartford Foundation and the members of the Hartford family that they are under no legal compulsion at any time to sell stock?

A. Yes.

Q. Professor Friend, I should like to direct your attention to du Pont Exhibit 32, which was a tabulation of cash offerings. You had a copy of that the other day.

A. I no longer have.

Q. You no longer have? I think you remember it because it was the one that was used in Mr. Emerson's testimony. You will note, Professor Friend, that in the upper part of this table, which is du Pont Exhibit 32, a number of stock offerings are listed and then an impact percentage figure is calculated with and without Upjohn. [fol. 3001] Permit me to ask you this question, Professor Friend. If before the Upjohn offering, an estimate had been made as to its probable impact on the price, which had been based solely on an average impact figure derived from the prior list of offerings which were shown in the upper part of du Pont Exhibit 32, the estimate as to the Upjohn offering, would, in fact, have understated the effect of that offering, would it not?

A. I agree with the question, as you phrase it; but I am afraid I disagree completely with what I understand to be the intent of it, so I am rather embarrassed.

Shall I go on and expand?

Q. I am not sure, really, that there is any difference between us.

A. Unless I can clarify it, how could you tell?

Q. Let me ask you the next question, and then you can explain.

I think perhaps this will give you the opportunity to explain.

That the reason for that possibly was, was it not, Professor Friend, that the Upjohn offering possessed peculiar characteristics of its own that were not present in any of the prior offerings which were listed in the tabulation?

A. I think, to be more specific on that, the Upjohn offering was not really an offering of a truly publicly-held stock.

Q. Yes. That is what I mean by a "peculiar characteristic" of the offering. That was a characteristic of the offerings that distinguished it, or made it different from the offerings listed in the upper part of the exhibit, was it not?

A. I agree; but I would go on to say that I would never, personally,—and this is no reflection on the person who got [fol. 3002] up this exhibit, because he is entitled to his own opinion—I would personally never put into an exhibit showing what happened to New York Stock Exchange stocks subject to new offerings an issue like Upjohn.

Clearly, if some were to try to sell a large block of Oshkosh Lumber Company stock, and there had been no—a very small public market for this offering, the impact on price would be impossible to gauge on the basis of any past statistics.

I am not suggesting that Upjohn is the same as the Oshkosh Lumber Company, but it is the same principle.

Q. You understand that my question was directed to a somewhat different problem. This exhibit shows it separately.

A. Surely.

Q. I understood you to say on Monday that you thought it was a relevant fact to be taken into consideration.

A. I agree, but I would want to show it separately, yes.

Q. What I was suggesting to you was whatever the peculiar characteristic was, it did possess a peculiar characteristic which set it off and made it quite different from the offerings that were listed, the other offerings that were listed in this exhibit.

A. It was a stock which had, for most practical purposes, not really had a very substantial public market up to the time of this offering.

Q. And that was a characteristic that was not present in the case of other offerings listed on this tabulation?

A. That is right.

Q. Does that suggest to you at all, Professor Friend, in using an average derived from a sampling of past stock offerings as a basis for estimating the impact of the future

offering or offerings, that some careful attention and weight should be given to any peculiarities of the proposed of-
[fol. 3003] fering or to any peculiarities of the environment in which the proposed offering would be made? Should those things be given very careful consideration?

A. The Upjohn case does not suggest that to me, but I agree with the conclusion.

Q. You agree with the conclusion, but not by the process by which I am let to this?

A. Yes.

Q. I will take that agreement.

Professor Friend, you testified on direct examination with respect to the decline in purchases of the General Motors stock by institutional purchasers. I think that occurs at the printed transcript page 2757. Will you look at that and see if you recall it?

A. What was that page number?

Q. 2757.

A. Thank you. I have it.

Q. Let me ask you—first I will give you an opportunity to read that passage in the testimony.

A. I have read that.

Q. Have you considered whether one reason for the decline in purchases of General Motors stock by institutional purchasers may be that they no longer regard General Motors as a growth stock?

A. I am always confused by the term "growth stock"; but it is certainly possible that institutional investors had a number of other considerations in mind, in addition to the hypothetical ones that I gave.

Q. You have heard of the Massachusetts Investors' Trust, have you not?

A. I have.

Q. Have you read the testimony of Mr. Moses of the
[fol. 3004] Massachusetts Investors' Trust in this proceedings?

A. No, I have not.

Q. Was your attention ever called by Government counsel to the fact that he testified that so far as concerns the growth fund of the Massachusetts Investors' Trust, they do not hold or buy General Motors, because they do not regard it as a growth stock?

A. I would take this as a fact.

Q. I am just asking you whether your attention had been called to that?

A. I don't think so.

Q. Let me ask you this question: Have you read any of the testimony that was given in this proceeding by Mr. Herd of the America Fore Life Insurance Group?

A. I have not.

Q. You haven't read the passage in his testimony that deals with this same point; that is, the attitude of his group towards General Motors as a growth stock?

A. No.

Q. In connection with this same passage, Professor Friend, in the middle of that page, you say:

> "One obvious possible cause is the fact that in the middle of 1955 the automobile industry, as a whole, had the best automobile year they have ever had in their history. In the middle of 1958, they had a horrible year. They were in the middle of a horrible year, so I wouldn't be too surprised to see some switch in portfolios on this account."

Had your attention been called to the fact that General Motors has introduced an exhibit in this record, which is General Motors Exhibit 25, which shows that the purchases by institutional investors of General Motors stock began to decline rather noticeably in the last half of 1955? Has that exhibit ever been shown to you?

A. I don't think so.

[fol. 3005] Q. Now, I should like to direct your attention to another passage in your direct examination on Monday. This is a passage that occurs at Page 2760, in which you were commenting on a certain computation that was made by Mr. Sumner Emerson in the course of his direct testimony?

A. Page 2761?

Q. 2760, I think. 2760.

A. Yes.

Q. In that passage, Professor Friend, you referred to two deficiencies which you found in the nature of that computation. Now, those deficiencies, as I understand them, your comments, rather, were directed to the fact that Mr. Emerson had used the total volume of trading on the New York Stock Exchange as the basis for computation that he made.

A. Yes.

Q. You were aware, were you not, that he had not included in that computation the volume of odd lot trading in du Pont stock on the New York Stock Exchange?

A. I was, but I thought there the theory was that taxwise it still would not pay such persons to dispose of their stock.

Q. Well, the theory—I think the purpose for which Mr. Emerson used this computation was to determine how many shares of du Pont stock had been bought since 1952 at a price which would be relevant in connection with the tax problem?

A. Ob iously, the price that would be relevant in connection with the tax problem would depend to some extent on the income bracket the person was in.

Q. But the odd lot purchases would be just as relevant as the round lot purchases, would they not?

A. I would have to go back to his computation; but depend on the tax bracket they were in, I suppose it might still [fol. 3006] pay them to hold onto their stock. It is conceivable that the capital gains tax would be in excess of the personal income tax.

Q. Yes, I think perhaps we are at cross purposes, Professor Friend. What I am suggesting to you is that the base figure of round lot trading since 1952, which Mr. Emerson used as a basis for his computation, and which you suggested perhaps was overstated because of two deficiencies, was at least understated by reason of the fact that he did not include in that figure odd lot purchases?

A. I would accept that if it turns out that odd lot purchasers might be expected to be motivated by tax reasons to liquidate their stock.

Q. Assuming that they behave in the same way as round lot purchasers?

A. No, not at all. You also have to assume that their tax brackets are the same.

Q. Perhaps the way to put it is that those purchases are as relevant as the round lot purchases, is that true, Professor? Is that what you mean?

A. Only if you can make the same assumption as to the tax brackets in which they fall.

Q. As you make as to ronnd lots?

A. Yes, which is a rather implausible assumption.

Q. Making that assumption, then round lot purchases would be significant?

A. You mean the odd lot purchases?

Q. The odd lot purchases, yes.

A. Yes.

Q. And do you have any notion of what the percentage relationship is between the round lot purchases of du Pont on the New York Stock Exchange and the odd lot purchases?

A. I would say it is about 15 per cent, give or take a couple of per cent.

Q. There are exhibits, two exhibits in the record, Professs Friend, which contain those figures.

[fol. 3007] Mr. Cox: This should be marked du Pont Exhibit for identification 61.

(Thereupon said document was marked du Pont Exhibit 61 for identification.)

Mr. Cox: This exhibit, Mr. Reycraft, has no independent probative value, it is just a computation based on the exhibit.

The Witness: Am I to comment on this?

By Mr. Cox:

Q. I just wanted to observe that this exhibit would indicate, Professor Friend, that the average percentage since 1952 has been about 28 per cent.

A. I am surprised that it is this large.

Are you certain this does not include sales as well?

Q. No. This is simply purchases, not sales. We have the figures broken down. I am quite sure of that, Professor Friend.

Now let me ask you another thing about Mr. Emerson's computation, to which your criticisms were addressed. You were aware, I take it, that he also did not include in that figure the trading in du Pont stock on the regional exchanges in the United States. You knew that wasn't included, didn't you, Professor Friend?

A. I would have to refresh my memory. I don't recall offhand.

Q. You don't recall.

A. I might say that I am perfectly willing to take your word for it.

Q. It is a fact that the exhibit which Mr. Emerson used for the basis of that computation showed round-lot trading on the New York Stock Exchange; I think there is no dispute about that.

[fol. 3008] Mr. Cox: I will at this point, to expedite matters, have another tabulation marked, which is based on exhibits that are in this case, as du Pont Exhibit 62.

(Thereupon said document was marked Defendant du Pont Exhibit 62, for identification.)

By Mr. Cox:

Q. This tabulation, which again rests on exhibits and has no independent probative value, lists the exhibits from which it is taken in the extreme right-hand corner, and shows the percentage relationship between the round-lot trading on regional exchanges in du Pont stock and the round-lot trading on the New York Stock Exchange for the years 1953 and 1957. It shows that percentage relationship to '53 was 14 per cent, 13 per cent in '54, 18 per cent roughly in '55, 22 per cent in '56, and 22 per cent in '57.

To the extent that Mr. Emerson did not include these figures in his basic figure, that figure was similarly understated. Is that not correct?

A. Yes, but at some stage I want to comment on this at some length.

Q. All I want to ask you is whether these omissions of the odd-lot figures and of the round-lot figures from the regional exchanges do not, to some degree, offset the double counting which you pointed out as a deficiency in the computation?

A. I would agree with that statement, and you may recall that I said I had no notion whether the figure he arrives at is, in fact, too high, too low, or just about right, but that there were two significant deficiencies that were not allowed for. The only one that came to my mind was the odd-lot, which I through was irrelevant, and I still am inclined to, although I may be missing the point.

There is another problem in connection with regional ex-

[fol. 3009] changes. I must confess that my knowledge of trading data usually depends on aggregate statistics, the figures I recall. That is why I said 15 per cent for odd-lot, for example. But a very high proportion of trading in the New York Stock Exchange stocks on regional exchanges

would be in odd lots, so I am not quite sure to what extent this is reflected here, or not. I just don't know.

Q. The regional exchange figures are taken from the Government exhibits. I am afraid I can't help you on that.

A. But I would agree with the direction—I am not quite sure how important the numbers are.

Q. But you agree that to some degree they would offset?

A. Yes.

Q. Now, Professor Friend, a short time ago in the course of my cross examination, you referred again to a statement you made on direct examination with respect to the periods of time you would choose for measuring the effect of a secondary offering, and you referred to the fact that—I think this is at Page 2747 of the printed transcript—to the fact that Mr. Emerson, for some purposes had selected a period four weeks before the offering price and then four weeks before the offering to two weeks after the offering as quite a relevant period. By the way, those computations of Mr. Emerson's, if you recall, were made on the basis of the average of a week's closing price—closing price for the week. In your opinion, is that a preferable basis for price comparison, as opposed to taking a particular day, Professor Friend?

A. That is a very difficult question to answer. It certainly is fully as good.

Q. I am sorry, I didn't hear you.

A. I say it certainly is fully as good. I don't know [fol. 3010] whether it is preferable. Let me just digress. I think it is a reasonably important digression.

In trying to use statistical data to validate a particular hypothesis, you have to state your hypothesis beforehand and you have to state the data that you are going to use to validate that hypothesis beforehand; otherwise it is very easy, and I am not suggesting in any sense that Mr. Emerson did this—to choose in this particular case points of time which show virtually anything. So the important point is to take reasonable periods, when there is some reasonable presumption, a priori, that the impact will be felt, and then to stick to those periods.

Q. Assuming that those would be the periods in which, as you say, a priori you believe the impact might be——

A. Yes.

Q. In this connection with the use of time periods, there is a passage in Mr. Emerson's direct testimony that I should like to read to you. This occurs at Page 1599 of the stenographic transcript, and it is a comment that Mr. Emerson was making on du Pont Exhibit 32, which is the chart that you will remember, I take it.

Mr. Emerson said, "Well, I think I should point out first that there are two figures for impact, one of them the date of the offering, and another a period two weeks beyond the offering. Which is the proper one to use deponds on whose viewpoint you would take. From the viewpoint of those who sold the stock, the left hand one, namely the point of view of the date of offering, is the right figure; from the point of view of those who bought the stock, the column at the right is the proper figure."

Would you agree with Mr. Emerson that the price, the date of offering, the secondary offering, is the significant [fol. 3011] figure for measuring the impact of a secondary, so far as it concerns the seller of the stock.

A. The end point.

Q. That is the price he gets for what he sold?

A. Yes. There is some question about the beginning price, but this is another matter.

Q. That is another matter?

A. Yes.

Q. And of course, that price is the price he gets. It is not the gross price he gets, because there is deducted from it the spread of the underwriter, is that correct?

A. Certainly.

Q. So in determining what he gets, you have to look not only at the offering price, but also at the underwriting spread?

A. That is correct.

Mr. Cox: May it please the Court, if I could have about three minutes, I think I can conclude.

Professor Friend, I think that is all, as far as I am concerned.

The Court: Are there further question of this witness?

Mr. Reycraft: I have just one question, I believe.

Redirect Examination.

By Mr. Reycraft:

Q. Doctor Friend, with respect to the time periods which were used in the exhibits which you asked to have prepared, you have testified in response to Mr. Cox's questions that you feel that for these time periods to have any validity they must be stipulated beforehand.

Did you so stipulate with respect to these charts before examining the basic data?

A. Are you referring to the Government exhibits which were prepared at my direction?

Q. Yes, sir.

A. Yes.

[fol. 3012] Q. So that as to these exhibits, you did not select the time period to produce any desired result, but you set up your assumptions beforehand, is that correct?

A. I both set up my assumptions beforehand, and then indicated a variety of possible relevant time periods beforehand.

Q. Each of which was accomplished in accordance with your instructions, is that correct?

A. That is correct.

Mr. Reycraft: I have nothing further.

The Court: You are excused.

(Witness excused.)

Mr. Owens: The Government calls Sidney Duffy.

---

Sidney G. Duffy, called as a witness on behalf of the Government in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Owens:

Q. Would you state your full name and address, please, sir?

A. Sidney G. Duffy; Blyth & Company, 14 Wall Street, New York City, New York.

Q. What is your position with Blyth & Company, sir?

A. I am a vice president of Blyth & Company and the national syndicate manager.

Q. Would you tell us what your responsibilities are as national syndicate manager for Blyth & Company?

A. My prime responsibility is the formation of undering groups and the wholesale distribution of the securities that we might underwrite as a manager of an underwriting group.

Q. Are you acquainted with the two million share Ford secondary offering?

A. Yes, I am.

Q. Did you have responsibilities in connection with that [fol. 3013] offering to the public?

A. Yes, I did.

Q. Would you tell us what your capacity was and what your responsibilities were specifically with relation to that issue?

A. In conjunction with the six other joint managers, I was responsible for the formation of the underwriting group, and the wholesale distribution of the stock through the underwriters and the selected dealers.

Q. Now, will you tell me when you first commenced your efforts to form that underwriting syndicate?

A. I would say approximately three weeks, three to four weeks prior to the registration date, the filing of the registration statement.

Q. Prior to the filing of the registration statement?

A. The filing of the registration statement, yes.

Q. And what did you do at that time?

A. I began to form the underwriting group. I considered similar underwriting groups that might have been formed by other syndicate managers from other firms that might have been similar.

I also referred to the underwriting group that was formed to underwrite the 10,200,000 shares of Ford Motor Company stock in 1956.

Q. Did you make a preliminary determination as to the size of the underwriting group that you would form in terms of number of underwriters?

A. Yes, an approximation of what we would have as an underwriting group. That was based in some sense on the consideration of these other groups I mentioned.

Q. Now, Blyth & Company was one of seven co-managers in managing that syndicate?

A. That is correct.

[fol. 3014] Would you tell us what steps you took in the first instance in reference to determining the size of the underwriting group?

A. You mean in considering the size or——

Q. No, in actually deciding who you would extend invitations to participate in the syndicate to?

A. Well, it was obvious that, basing it on the prior Ford underwriting, that the group was too large. We determined that the best way to arrive at a suitable group would be to remove the last three brackets of the original 10,200,000 share underwriting group, which would leave us approximately 300 names, which is about a normal sized group for that size offering, for the two million shares size offering.

Q. Will you explain to us what you mean by brackets, sir, in reference to this grouping of underwriters?

A. Well, that is specifically what they are. The brackets are set up, based on underwriting participations. Naturally, the managing underwriter, or underwriters, in this case, would have the largest participation, and then based on capital and distribution abilities, the underwriting brackets would be reduced, and those underwriters who were of similar size and capital resources or distribution reasons would be bracketed together.

Q. So the brackets are grouped according to the size of the underwriting commitment of the particular concern?

A. That is correct.

Q. When you say you eliminated the last three brackets that have participated in the original Ford financing, that means the underwriters that fell in a group, in those groups that had what size of participation in the original offering?

A. Well, I can't recall exactly the amounts, but I know [fol. 3015] the last bracket in the 10,200,000 share underwriting group had 1,500, and then I think the next bracket had 2,500—this is going up the group—the next bracket had 3,500 share participation. So those were the three brackets that were basically omitted from the two million share underwriting group.

Q. Did you reduce your program in respect to the composition of the underwriters to writing for the purpose of giving this information to the other co-managers?

A. Yes. I submitted to each one of the other co-managers a copy of the group as I had considered it at the time it was submitted to them.

Mr. Owens: I will ask the reporter to mark for identification a copy of a memorandum dated March 6, 1959, and signed by Sidney Duffy.

(Thereupon said document was marked Government Exhibit 683 for identification.)

By Mr. Owens:

Q. Do you have a copy of that document, Mr. Duffy?

A. Yes, I do.

Q. The second paragraph of that document says, "Inasmuch as the contemplated offering will be approximately 20 per cent of the initial offering in 1956, certain basic changes are necessary in the formation of the underwriting group."

Then there are listed below that, I take it, the changes that you suggested in the composition of the underwriting group for this two million share secondary is that correct?

A. That is right. These are the changes that were incorporated in the preliminary list that I sent to these six other joint managers.

[fol. 3016] Q. And the second page of that memorandum groups the underwriting participants according to brackets, is that correct?

A. That is correct.

Q. Indicating the size of the participation in respect to each bracket?

A. That is correct.

Q. And the number of underwriters in each bracket?

A. Yes.

Q. Do you recall when you forwarded this to your co-managers?

A. It was forwarded on March 6, 1959.

Q. Did you subsequently arrange to meet with them for purposes of discussing your formation of the underwriting syndicate or your suggestions?

A. I did.

Q. When did those meetings take place?

A. On March 10th.

Q. Did you have meetings with representatives of Miller Lynch underwriting concern?

A. Do you mean Merrill Lynch, Pierce, Fenner & Smith?

Q. Yes.

A. Yes, I did.

Q. Who attended on their behalf?

A. Mr. Norman Smith and Mr. Wallace Latour.

Mr. Tierney: If the Court please, I can't see where this is rebuttal, who attended these meetings. My land, we will be here all night. I object to this detail. How is it material?

Mr. Owens: It has to do with the problems that they encountered in forming an underwriting syndicate.

I believe, your Honor, a number of witnesses testified with respect to their reluctance or unwillingness to participate in secondary offerings.

The Court: Well, proceed, and avoid unnecessary details. Let's get right down to the meat of it.

[fol. 3017] By Mr. Owens:

Q. Did those representatives, Mr. Duffy, express any concern to you with respect to the success of the offering at the meeting?

A. No, it wasn't discussed at any of those meetings.

Q. Would you describe for us your experience in forming that syndicate when you sent out invitations to them?

A. Yes. I sent out wires—let me begin again.

After I had met with the six other joint managers, a final list was made up, a list of an underwriting group that was again submitted to the joint managers and approved by them, and subsequently a wire was sent out to each one of the underwriters that was in this approved list.

At the same time I released a wire to the underwriters who had been in the prior Ford underwriting, the ten million, two hundred thousand share underwriting, whom we could not include in this underwriting because of a difference in size, and told them that although they were an underwriter in the 1956 offering, we regretted that we were unable to invite them into this offering.

Mr. Owens: I will ask the reporter to mark for identification, a copy of the Western Union telegram relating to

Mr. Duffy's statement that he sent a wire to those underwriters who were not being invited into the two million share issue, who had been invited in the 10,200,000 shares issue.

(Thereupon said document was marked Government Exhibit No. 684, for identification.)

By Mr. Owens:

Q. Do you have a copy of this telegram, Mr. Duffy?

A. Yes, I do.

[fol. 3018] Q. Would you tell us what considerations prompted you to send that telegram?

Mr. Tierney: Well, if the Court please, I don't see that it makes much difference in this case what considerations he had in mind. I object to this.

The Court: What is the materiality of these details, counsel?

Mr. Owens: The materiality, your Honor, is to demonstrate the fact that in forming a syndicate to market two million shares of an automobile stock, that the managing underwriter experienced no difficulty in forming a syndicate.

Now, we have had testimony from other witnesses as to the fact that they probably would be reluctant to participate in any such underwriting of two million shares under the circumstances of the Government's proposed judgment, and I think it is highly material to show the degree of difficulty that they did have in forming a syndicate here.

It is an amount of shares that in number is practically identical, and it was automobile stock. I don't expect that any experience is going to be more highly relevant.

Mr. Cox: No witness testified that they were reluctant to participate in underwriting under any conditions, Mr. Owens. The question was always at what price.

If you wanted to sell this General Motors stock tomorrow morning at ten, every underwriter in the country would buy it.

Mr. Owens: Well, we are talking about an underwrit-

[fol. 3019] ing, Mr. Cox, that had a definite offering price so that it can be appraised in relation to that.

Mr. Cox: What the witness was talking about was an offering price substantially below the present price, the price at which it otherwise would exist. How does it help to prove what people said in meetings on the floor? We will be here all evening.

Mr. Owens: It shows what their actual conduct was, as contrasted with what opinions they expressed.

Mr. Tierney: If the Court please, I would like to have a ruling on my objection. I think it is apt.

The Court: I will sustain the objection.

I think these are unnecessary details.

By Mr. Owens:

Q. Did you experience any difficulty whatsoever in forming this syndicate, Mr. Duffy?

A. None, no.

Q. Pardon?

A. No troubles—Do you mean getting underwriters?

Q. In getting underwriting commitments to underwrite the two million shares?

A. No.

Q. Did you have problems with reference to people who wanted participations, that because of the size of the issue you were not able to extend?

A. Yes, we did. We had requests from underwriters or potential underwriters and dealers who did want to be a member of the group, but we were not able to include them, because we had an adequate group, in my opinion, at that time.

Q. Was the sending of that telegram one of the means by which you sought to minimize the problems that you had in turning down people who requested participations, where you said you would not be able to grant it?

[fol. 3020] A. Yes. I sent the wire to preclude the possibility of a lot of the underwriters from the 10-million share deal calling me in asking to be included.

Q. Do you recollect, sir, whether or not you had any—what the participation of Glore-Forgan was in this issue?

A. 25,000 shares.

Mr. Tierney: It is already in evidence, your Honor. It is wholly irrelevant and immaterial.

Mr. Owens: I want to ask a question with relation to it.

Mr. Tierney: Well, I object to it. What is the purpose if it is not rebuttal, your Honor?

Mr. Owens: It has relation to the participation of Glore-Forgan, who made an assertion here with respect to their willingness to participate in an underwriting syndicate of the General Motors stock proposed to be offered under the Government's judgment.

Mr. Tierney: No, the testimony of Mr. Forgan was that he would participate in it at a price.

The Court: That does not seem to rebut anything. I sustain the objection.

Mr. Owens: Well, if your Honor please, he testified, I believe, with respect to figures in the neighborhood of $33 at which he would participate in underwriting General Motors stock.

The Court: All right, the Court has ruled.

By Mr. Owens:

Q. In accepting the participations that you offered to the underwriters, did they make any conditions or stipulations with respect to the actual offering price?

A. No.

[fol. 3021] Q. Did Glore, Forgan make any stipulations with respect to the actual offering price?

A. Not to my knowledge, no.

Q. Did Merrill Lynch, Pierce, Fenner & Smith make any stipulations with respect to the proposed offering price?

A. No.

Q. Did either of those concerned make any stipulations or qualifications as to the spread?

A. No.

Q. Now, would you tell us when you began to accept indications of interest from members of the selling group in respect to this issue?

Mr. Cowen: I think this is immaterial, if the Court please, and I object to it.

The Court: Sustained.

By Mr. Owens:

Q. After the filing of the registration statement, and prior to the offering date, did you record indications of interest from members of the selling group?

A. I did.

Q. And could you tell us what the state of your book was, the subscription book, on March 31st——

Mr. Cox: If the Court please, this was testified to this morning by Mr. Sheets. This is all just repeating. I object.

The Court: Sustain the objection.

By Mr. Owens:

Q. Did you have information from which you could determine whether or not the offering would be over-subscribed prior to the formal closing of the subscription books, Mr. Duffy?

A. Would you repeat that again?

[fol. 3022] Q. Did you have information in your books from which you could determine the probabilities of the issue being over-subscribed prior to the formal closing of the subscription books?

A. I guess the first indication I got of that would have been the afternoon before the closing.

Mr. Tierney: Who is examining who?

The Witness: I beg your pardon?

Mr. Tierney: Is that a question or answer?

The Witness: I am making a statement.

Mr. Owens: He said the afternoon before the closing.

Mr. Tierney: The inflection got me.

Mr. Owens: I ask the reporter to mark for identification a group of letters, the top one of which is dated March 16, 1959.

(Whereupon said documents were marked Government Group Exhibit No. 693 for identification.)

By Mr. Owens:

Q. Do you have a copy of this group of letters, Mr. Duffy?

A. I do.

Q. And would you describe to us what the character of those letters is, and the circumstances under which you received them?

Mr. Cox: I object. The letters are going to go into the record. I do not know whether they should, and if they do they will speak for themselves.

The Court: Well, he may describe them generally.

[fol. 3023] By the Witness:

A. Generally, these are requests for inclusion in the selling group in the Ford underwriting. There are, I think, an instance of two where they do request participation in the underwriting.

By Mr. Owens:

Q. Now, are these requests from people to whom you had not extended invitations to participate in the syndicate?

A. That is correct.

Mr. Owens: I offer Government's Exhibits 681, 683, 684 and 693.

The Court: Any objections?

Mr. Cox: No obections.

The Court: They are received.

(Said documents, so offered and received in evidence were marked Government's Exhibits 681, 683, 684 and 693.)

Mr. Cox: We have no cross.

The Court: You are excused.

(Witness excused.)

Mr. Reycraft: Your Honor, if we may have a few minutes, we have no witnesses but we have a few documents, so if we can have a couple of minutes I think we can finish very promptly.

The Court: It will be necessary for me to adjourn promptly at four-thirty.

[fol. 3024] Mr. Reycraft: Yes, indeed, your Honor.

The Court: All right, the Court stands recessed for five minutes.

(A short recess.)

Mr. Reycraft: If it would be agreeable to your Honor, I think that counsel feel we might be able to avoid confusion and perhaps misunderstanding if we are able to take overnight to look at some of these papers and present them to your Honor in the morning. There is no more testimony, I understand. There is none for the Government. I think we will take just a very few minutes of your Honor's time tomorrow morning.

The Court: That is a good suggestion.

Mr. Cox: We are agreeable to that.

RULING WITHDRAWING MR. CARSON'S MOTION TO VACATE SUBPOENAS

The Clerk: May I make a statement for the Court? I still have this pending, undisposed of motion to quash a service of subpoena duces tecum on Smith, Barnes and Morgan Stanley.

Mr. Reycraft: A letter was sent, your Honor, by Mr. Carson, and I believe he withdrew his motion. I believe we have worked it out satisfactorily.

The Clerk: Well, there is nothing in the record to that effect.

Mr. Reycraft: I have a copy of the letter which I will be glad to hand you.

The Court: All right, the motion is withdrawn.

[fol. 3025] OFFERS IN EVIDENCE

Mr. Dallstream: If the Court, please, there are two matters, which I think there is no dispute about; which I might dispose of to save time in the morning. First, I have Amicus Dallstream Exhibit 3, which is a compilation of the date, the number of shares covered by the offering of the two Ford registered secondaries, the offering price, which is in the evidence, the Standard and Poor's industrial closing stock index price on those dates, and the adjusted index for both Ford and for A&P showing the differences in the price of the Ford stock in relationship to the market.

I should like to offer that in evidence as Amicus Dallstream Exhibit 3.

Mr. Reycraft: I have no objection.

The Court: It is received.

(Said document, so offered and received in evidence was marked Amicus Dallstream Exhibit 3.)

Mr. Dallstream: If the Court please, in paragraph B-1 of Article 3 of the proposed judgment, which I have filed in this case, I recommended that no person who is a director or officer of du Pont, Christiana or Delaware, or is a spouse or relative living in the same house with any such person, be permitted to exercise the pass-through voting rights on General Motors stock, or to direct or solicit others with respect to the exercising of such voting rights.

The material put in on Monday, a part of which was prepared in conjunction with us, by the Government, and by Christiana, does not separate out the stock holdings [fol. 3026] in the three corporations of this particular group of persons.

I think it would be helpful to have this material before the Court in a convenient exhibit. Accordingly, I have caused it to be arranged in amicus Dallstream Exhibit 4, which consists of six pages, and I would now like to offer that exhibit.

Mr. Reycraft: No objection.

Mr. Cox: May it please the Court, I have no objection to this exhibit but we would like an opportunity to check it over.

Mr. Dallstream: It will be subject to your check. I think Mr. Scott has checked it, but——

Mr. Cox: My failure to object should not be taken as indicating that the du Pont Company agrees with this part of your propsal.

Mr. Dallstream: I understand, sir.

The Court: It is received subject to checking.

(Said document, so offered and received in evidence was marked Amicus Dallstream Exhibit 4.)

Mr. Cowen: On page 80 of my report, I have some similar findings with little difference. If there is any difference in exhibits, I will submit them to the parties. There is a

slight difference because of certain persons who I say, for a period of ten years, have been an officer or director should be restrained from voting.

[fol. 3027] Now, if this exhibit does not sufficiently cover it, I will supply another one. Other than that, I think it is very helpful.

Mr. Dallstream: If the Court please, lest perhaps we have forgotten tomorrow, when we may be in a hurry, there has not yet been handed down the tax ruling for which application is now pending in the Treasury Department on the so-called takedown plan.

I should like to note in the record that if, after the close of this case, and before decision by your Honor, such tax ruling is received, that I am reserving, giving notice to all the parties that I am reserving, the right to at least make application to the Court for supplying the record with that ruling, and offering any evidence which would seem to be indicated by reason of the character of the ruling.

The Court: You may have that privilege.

Mr. Cox: If it please the Court, there were three tabulations that I used this afternoon in the cross-examination of Professor Friend, which are marked du Pont Exhibits for identification 60, 61 and 62. I should now like to offer them in evidence, with the understanding the Government will have an opportunity to check them and any errors may be corrected.

Mr. Reycraft: No objection.

The Court: They are admitted.

(Said documents, offered and received in evidence, were marked Defendant du Pont Exhibits 60, 61 and 62.)

[fols. 3028-3029] The Court: Is there anything further this afternoon? If not, Court will adjourn.

(Thereupon an adjournment was taken in the above-entitled cause until 10:00 o'clock a.m. of the following day, Thursday, April 9, 1959.)

[fol. 3030]

## Transcript of Proceedings of April 9, 1959

The Clerk: Case on trial.

The Court: Counsel may proceed.

### Offers in Evidence

Mr. Reycraft: I offer Government's Exhibit 685, which is a two-page document entitled, "Dividend Payments by Standard Oil of Indiana."

(Thereupon said document was marked Government Exhibit 685 for identification.)

Mr. Burnham: Your Honor, in connection with that, I spoke with Mr. Reycraft and asked if he would require a witness for a letter that I would like to put in evidence, and he said he would not require a witness. This is a letter which I would like to have marked. It is from Standard Oil Company to its stockholders and it explains the reason for the dividend policy, which it was following, which was to conserve cash for expansion purposes. If I may have that marked and offer that as a General Motors exhibit, then I have no objection.

Mr. Reycraft: No objection.

The Court: Both exhibits are admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 685.)

(Said document, so offered and received in evidence was marked General Motors Exhibit 30.)

Mr. Reycraft: I offer Government's Exhibits 686 and 687, which are documents from Merrill Lynch's file relating to the Ford issue.

Mr. Cox: No objection.

The Court: They are received.

[fol. 3031] (Said documents, so offered and received in evidence were marked Government's Exhibits numbers 686 and 687.)

Mr. Reycraft: I offer Government's Exhibits 688 and 689, the first of which is a copy of a telegram from Carl M. Loeb, Rhoades & Company.

(Thereupon said document was marked Government's Exhibit 688 for identification.)

Mr. Reycraft: The second is a letter of March 30, 1959 from Carl M. Loeb, Rhoades & Company, relating to the A & P issue.

(Thereupon said document was marked Government's Exhibit 689 for identification.)

Mr. Cox: No objections.

Mr. Raycraft: Will you mark for identification as Government's Exhibit 690 a three-page document from the files of Morgan Stanley Company referring to the Great Atlantic & Pacific Tea Company offering, a series of statistics prepared by Morgan Stanley.

(Thereupon said document was marked Government's Exhibit 690 for identification.)

Mr. Reycraft: I offer Government Exhibit 690.

Mr. Cox: No objection.

The Court: They are admitted.

(Said documents, so offered and received in evidence were marked Government's Exhibits Number 688, 689 and 690.)

Mr. Reycraft: I believe the parties are also agreeable, [fol. 3032] your Honor, for leaving open in the record exhibit numbers for the annual report of General Motors and du Pont for 1958, and I believe each of the companies is agreeable to furnish sufficient copies so they won't be required to be printed.

Mr. Burnham: Why don't you offer the copy you have there for General Motors?

Mr. Reycraft: I can offer the General Motors report, which will be Government's Exhibit 691.

(Thereupon said document was marked Government's Exhibit 691, for identification.)

Mr. Reycraft: I do not have a copy of the current du Pont annual report.

Mr. Cox: We will furnish a copy.

Mr. Reycraft: That will be Government's Exhibit 692.

The Court: They are admitted.

(Said documents, so offered and received in evidence were marked Government Exhibits 691 and 692.)

Mr. Reycraft: I believe Mr. Ludlow would like to address the Court.

Mr. Ludlow: The record is not clear on the status of Government's Exhibits 562 and 569; however, the parties are agreed that they are to be considered in evidence.

The Court: They are admitted.

(Said documents, so offered and received in evidence, were marked Government Exhibits 562 and 569.)

Mr. Reycraft: Your Honor, I have a motion with respect to the testimony of Doctor Tepping, a motion to strike his [fol. 3033] testimony and the exhibits based on the examination of his work papers, which I would like your Honor's permission to file.

Mr. Gribbon: If your Honor please, as we were leaving the Court last night, this 20-page memorandum was served on us for the motion this morning. Will it be permissible if we have a few days in which to file some kind of reply memorandum?

The Court: You may, and the Court will rule on the motion and the memorandum.

Mr. Gribbon: Ten days in which to put something in?

The Court: Yes.

Mr. Reycraft: And five days to reply, your Honor?

The Court: Ten and five.

Mr. Reycraft: One other matter, your Honor. We have attempted to get some clarification from the Securities and Exchange Commission with respect to the registration requirements as to a distribution, such as might be accomplished under the Government's proposed judgment, and if your Honor will permit us, I would like to file some papers on that, an exchange of letters, as soon as they are available.

The Court: Any objections?

Mr. Gribbon: No objection.

The Court: The motion is granted.

(An exchange of letters between the Department of Justice and the Securities and Exchange Commission dated April 3, 1950, April 8, 1959, and April 22, 1959 was sub-

sequently provided by the Government, and the letters were offered and received in evidence as Government Exhibit No. 694.)

[fol. 3034] Mr. Tierney: If the Court please you reserved a ruling on Exhibit 538, to which we objected. We withdraw our objection to that.

The Court: 538 is received in evidence.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 538.)

Mr. Reycraft: We rest, then your Honor.

Whereupon the Government rested its case in rebuttal.

Mr. Cox: May it please the Court, in relation to Mr. Reycraft's reference to the material from the SEC, may I assume that if it seems necessary to the defendants, they may have an opportunity to file any supplementary or additional documents that relate to the same subject?

Mr. Reycraft: No objection by the Government, your Honor.

The Court: The motion is allowed.

(A letter from Morgan Stanley & Co. dated May 18, 1959 was subsequently provided by counsel for the du Pont Company, and the letter was offered and received in evidence as du Pont Exhibit No. 75.)

Mr. Horsky: Your Honor, I have asked to reporter to mark a few documents for the du Pont Company, which I would like to note for the record and offer in evidence.

The first is du Pont Exhibit 59, which was identified yesterday in the record, a story about Ford Motor Company, which is offered not for the truth of the matters but to prove its publication in the Wall Street Journal.

(Said documents, so offered and received in evidence, was marked Defendant du Pont Exhibit No. 59.)

[fol. 3035] Mr. Horsky: Similarly, I have another group of newspaper articles from the New York papers, Wall Street Journal, New York Times, and others, which I have marked as du Pont Exhibit 65. Copies of these have been supplied to the Government. I understand there is no objection.

Mr. Reycraft: Not on the basis of the way it has been offered.

(Said documents, so offered and received in evidence were marked Defendant du Pont Group Exhibit No. 65.)

Mr. Horsky: du Pont Exhibit 63 for identification is a prospectus of the recent 1,800,000-share issue of the Great Atlantic & Pacific Tea Company, the final prospectus.

Mr. Reycraft: No objection.

(Said document was marked Defendant du Pont Exhibit No. 63 for identification.)

Mr. Horsky: du Pont Exhibit 66 is a schedule of computations relating to the payment by Standard Oil Company of Indiana of a portion of its dividend in Standard of New Jersey stock.

Mr. Reycraft: No objection.

(Thereupon said document was marked Defendant du Pont Exhibit 66 for identification.)

Mr. Horsky: du Pont Exhibit 67 is a listing of the current prices of General Motors since June 30, '58, monthly until the end of January, '59, weekly until the end of March, '59, and daily since that time.

(Thereupon said document was marked Defendant du Pont Exhibit 67 for identification.)

Mr. Horsky: du Pont Exhibit 68 is a chart of the same price movements.

[fol. 3036] (Thereupon said document was marked Defendant du Pont Exhibit 68 for identification.)

Mr. Reycraft: No objections.

Mr. Horsky: du Pont Exhibit 70 is a comparison of A&P and other food chain prices, the average of the closing prices of the four weeks prior to the offering date and the closing prices on the day of offering, March 24, '59.

Mr. Reycraft: No objections.

(Thereupon said document was marked Defendant du Pont Exhibit 70 for identification.)

Mr. Horsky: du Pont Exhibit 71 is a letter or a telegram, I should say, from the file of Loeb-Rhoades & Company

relating to the A&P stock issue, and it is dated March 27, 1959.

(Thereupon said document was marked Defendant du Pont Exhibit 71 for identification.)

Mr. Horsky: du Pont Exhibits 72, 73 and 74 are papers extracted from the Merrill Lynch files relating to the Ford Motor Company issue.

Mr. Reycraft: No objection.

(Thereupon said documents were marked Defendant du Pont Exhibits 72, 73 and 74 for identification.)

Mr. Horsky: I offer all of those in evidence.

The Court: They are all received in evidence.

(Said documents so offered and received in evidence were marked Defendant du Pont Exhibits 59, 65, 63, 66, 67, 68, 70, 71, 72, 73, and 74.)

[fol. 3037] Colloquy Between Court and Counsel

Mr. Dallstream: If the Court please, I think before the record in this case is closed, it would be most appropriate to note, at least in the record so that it may be a matter of reference in the future in any comments concerning the record, the fact that in the 85th Congress in the Second Session, Senator Frear introduced Senate Bill 3962, a copy of which is set forth in Appendix B of the report which I filed in this case.

At the commencement of the 86th Congress the Bill, in precisely the same language, was reintroduced and is now pending in the Senate and has been referred to an appropriate committee, and I feel I can say without any feeling that I am overstating the situation that hearings will be had upon that Bill within the coming month.

There is more than a reasonable likelihood that this Bill will receive substantial support, both from those interested in the enforcement of the anti-trust laws and the administration of the tax laws.

Without in any sense indicating that this is an appropriate case in which resort should be had to the Frear Bill, if it is adopted and becomes the law, I feel nevertheless that in taking this case under consideration this matter should be of record and that all of us may refer to the mat-

ter to the extent that it has any appropriate effect in our opinion.

The Court: Well, if no other Counsel wish to be heard, before closing the record in this case, the Court would like to read a letter from his fan mail. It is quite interesting, and I think you will find it as interesting as I have. (Reading:)

"February 18, 1959

[fol. 3038]

"U.S. District Judge Walter J. LaBuy
Chicago, Illinois

"Your Honor:

"Noting a news clipping of February 17th, could you stand taking a peek at one of the fragments of the du Pont Company? For that is what we are—hundreds of thousands of 'little fragments', besides those big money interests you associate with the companies.

"I'm an old lady of 75, retired on dividend income. Last year's total was $3,622.76—booming year. During the depression the same holdings bought in very little over $900.00, and could again if another one hit.

"One of my last year's dividends was 26¢ semi-annually (gospel truth—13¢ a share on 2). Others are $1.70, $2.63, $2.50, $3.00, $3.50, etc. quarterly. Then $5.00, $6.00, $7.50, $6.50, $10.00, $15.00, etc. du Pont pays me $114.00, one of my 2 biggest. But can it if a split-up-calamity knocks the value of it and General Motors, and perhaps the whole market?

"If they give the shareholders the stock, two big taxes take chunks of it. Here in Massachusetts, which is death on anyone with stocks, giving us less exemption than others, then taking a straight 6% in income taxes, you can picture the field day on the 'little fragments'!

"Now don't get sorry for me. I'm not sorry for myself. If I were any happier I'd go straight up in the air. (I lived through the $900.00 period and probably would again.) I have a tiny home at the end of a cliff where the worst storm tides come up over the seawall and porch to the doorsills of the house, and I love every minute of it—with my dear old scow that I navigate under my own power.

[fol. 3039] "Am just scrawling this because I honestly believe a man in your position wants to see the whole picture, of even the 'fragments'. Take it in the spirit I toss it, not using busy moments to reply.

"Respectfully, and very sincerely,".

She signed as Miss, and since I do not have her permission to use her name, I have deleted it from the letter. I have copies for counsel. The Clerk has them.

Well, in closing, I want to thank all the counsel on both sides for your cooperation and for your assistance to the Court, and ask your continued cooperation in getting in your briefs on time and not requesting extensions. So I thank you all, and wish you well.

Mr Cox: I think, may it please the Court, I speak for all counsel when I say I should like to express our gratitude to you for your courtesy and patience, and the attention with which you have heard our evidence from both sides.

The Court: Now, I do not know whether an order has been entered yet. Has there?

The Clerk: With respect to briefs?

The Court: Yes.

The Clerk: No.

The Court: Well, the order is all briefs—the Government's first brief, twenty; defendants', twenty; the amici, ten; and the Government's reply, ten. That is the order.

(Which were all of the proceedings had, and evidence taken, in the trial of the above-entitled cause.)

[fol. 3040] GOVERNMENT TRIAL EXHIBIT No. 1

American Telephone and Telegraph Company
195 Broadway, New York 7
EXeter 3-9800

JOHN J. SCANLON
Treasurer

January 6, 1959.

Mr. V. R. Hansen, Assistant Attorney General,
Antitrust Division,
United States Department of Justice,
Washington 25, D.C.

Att: Mr. Eugene J. Metzger VRH:GDR 60-107-37

DEAR MR. HANSEN:

In compliance with Mr. Metzger's request, the following summarizes my comments during our informal discussion, on November 13, 1958, of Bell System financing and related matters.

Bell System construction expenditures during the 1946-1958 period have totaled approximately $19.1 Billion. Of this amount, $1.6 Billion has come from retained earnings, and $5.5 Billion has been supplied from depreciation accruals and net other internal sources of funds. The balance of $12.0 Billion has been raised through the sale of securities which may be summarized broadly as follows:

Bell System

New Capital Raised—1946-1958

| | | |
|---|---|---|
| Debt | | |
| American Tel. & Tel. Co. | | $ 1.9 Billion |
| Operating Companies | | 2.9 " |
| Equity | | |
| American Tel. & Tel. Co. | | |
| Convertible Debentures | | |
| Face Amount Converted | $ 3.9 Billion | |
| Conversion Premiums | 1.6 " | |
| | | 5.5 " |
| | | .6 " |
| Stright Stock Offer | | .9 " |
| Employees' Stock Plan | | |
| Operating Companies | | .2 " |
| Minority Stock Offerings | | |
| Total | | $12.0 " |

[fol. 3041] It is estimated that the new capital raised by the Bell System in the postwar period represents about one-eighth of all the new capital raised publicly by U. S. corporations in that period, and that in terms of equity capital the Bell System accounted for more than one-quarter of the national total. These proportions are attributable (1) to the high rate of growth in our business during the post-war period—about twice the rate of growth in the GNP—and (2) to the fact that a comparatively small portion of our growth has been financed through internal sources. In this latter connection, U. S. Department of Commerce data indicate that, for all corporations, about 27% of funds required in the postwar period has come from external financing, and 73% has been supplied from internal sources. For the Bell System during the same period, external financing has accounted for 63% of the funds required for construction, while only 37% has come from internal sources.

Mr. Metzger was interested primarily in our equity financing. As you will note in the foregoing table, the proceeds from the sale and subsequent conversion of convertible debentures have been our most important source of external funds in the postwar period. There have been eight such issues, each offered to stockholders through preemptive rights. The sale of convertible debentures in our case has represented a transitional method of acquiring equity capital. The conversion price in all instances was set somewhat below the market price for the stock at the time the terms were established, and in all eight issues the conversion privilege became operable within a few months after the issue date.

The use of convertible debentures as a means of obtaining equity capital for the Bell System has had as its principal advantage a cushioning of the market impact of the new shares emanating from the successive offers. As an example, our 1958 offer contemplated the ultimate issuance of more than seven million new shares. About one-half of the offer was absorbed through subscription by existing share owners. The remaining rights—representing an ultimate 3½ million shares—were sold by the share owners to whom they were issued originally. In a straight stock offering, the sale of rights equivalent to 3½ million shares

in a marketing period of slightly more than a month would exert a sharp downward pressure on the stock price, since ordinarily only about 200 to 300 thousand shares would be traded on the securities exchanges in such a period. In our convertible debenture offerings, however, there has been a ready market for rights offered for sale by stockholders who do not themselves subscribe for the debentures. Such rights are purchased in large measure by or on behalf of investors who employ bank credit to establish positions in the debentures. Banks require only about 10% to 15% margin on the purchase of debentures. Since the conversion price of the debentures is below the existing market price of the stock and the price of the debentures therefore tends to move generally dollar for dollar with the price of the stock, such investors can maintain positions in the convertible debentures with the same possibility of profit resulting from a subsequent rise in the price of the stock as would be present in a position in the stock itself.

[fol. 3042] After a convertible debenture issue has been sold, the investors who have taken positions with the aid of bank credit tend to sell their debentures, usually to arbitragers, as opportunities to liquidate at a profit arise. Thus, the shares contemplated in our convertible debenture offerings which are not acquired through subscription by shareowners of record, are absorbed in the market subsequently thru a more or less self-regulating mechanism which is controlled by demand for the stock itself. Generally, one of our convertible debenture issues will be almost wholly converted within one or two years from the date of issue.

The advantage of this marketing mechanism from the standpoint of cushioning the market impact of the new shares is attested by our experience with the single instance of a direct stock offer to share owners in the postwar period. In that offer, where the ratio of offering was 1:10, the issue price was set at par, and with a market price cum rights in excess of $180, the rights sold initially in excess of $7 each. Because of the attractive subscription price, the shareowners of record absorbed nearly 75% of this offer through direct subscription. Nonetheless, the market pressure resulting from sale of the remaining rights caused the price of the stock to drop from about $173 (ex-rights

and ex-dividend) to a low of $165 during the subscription period.

There is attached a tabulation showing pertinent details relating to the eight convertible debenture offerings and one straight stock offering by A.T.&T. during the 1946-1958 period. This will supply the specific information requested at the time of Mr. Metzger's last visit here, and will also meet the supplemental request in your letter dated December 12, 1958, that information as to the number of share owners involved be included in the material supplied to you.

Two other sources of equity capital are shown in the table on the first page of this letter. The first is the Employees' Stock Plan of the American Telephone & Telegraph Co. Under this plan, there have been successive offerings under three authorizations by share owners. The stock is offered to practically all employees of the American Company and its subsidiaries, (the principal exception being officers of the A.T.&T. Co.) for installment purchase at a discount from market which qualifies the plan as a restricted stock option under the provisions of the Internal Revenue Code. The plan is essentially a capital raising plan and has the collateral benefit of affording the employees an opportunity, thru systematic savings, to acquire an ownership interest in the business where they are employed. The second of these other sources of Bell System equity capital shown in the table represents the proceeds from subscriptions by minority holders in stock offerings of certain American Company subsidiaries with minority amounts of capital stock in the hands of the public.

Mr. Metzger's other major interest was in the make-up of A.T.&T.'s share owner list. As of December 31, 1945 there were outstanding 20,166,000 shares registered in some 684,000 share owners' accounts. By the end of 1958 these figures had grown to some 70,500,000 shares outstanding which were registered in more than 1,600,000 share owner accounts. Our share owner list is dominated by small holders. At the present time about half of the accounts [fol. 3043] hold 15 shares or less, and the average holding per account is 43 shares. Some 96% of the accounts are registered in the names of individuals, and approximately 85% of the shares are owned by individuals. No individual

owns as much as 1/30 of 1% of the outstanding shares. The holdings of accounts with 100 shares or less represent nearly half of the outstanding shares. The largest share owner account—that of Merrill Lynch, Pierce, Fenner and Smith—held approximately 587,000 shares at the end of 1957, but proxy material furnished to that firm would indicate that its holding is for the benefit of some 15,000 customers.

Foreign holdings of our stock are comparatively negligible. Less than 1% of our shares are registered in foreign accounts and about one-third of these bear Canadian addresses.

In addition to Mr. Metzger's queries relating to our equity financing and to the ownership of our shares, he also inquired about the Bell System pension funds. There are 33 separate funds which have been established by units of the Bell System and which are administered by the Bankers Trust Company, New York, as Trustee. At the end of 1957, the aggregate book value of these funds was approximately $2.6 billion. They are growing currently at a rate somewhat in excess of $200 million per year. The investment of these funds is the province of the Trustee under broad general directions from the companies. In mid-1958 the Trustee was authorized to invest up to 10% of the book value of the funds in common stocks registered on national securities exchanges. Previously the investment had been limited to governmental obligations, and to high-grade corporate obligations which, by statute in New York, were permitted as investments by insurance companies. It is presumed that it may take the Trustee a number of years to reach the limit of 10% of the funds invested in common stocks, although this is, of course, a matter in the Trustee's general discretion.

I believe the foregoing covers the essence of our discussion. If you or Mr. Metzger have any further questions, I should be happy to discuss them with you.

Very truly yours, J. J. Scanlon, Treasurer.

(Here follows 1 Photolithograph, side folio 3044)

[fol. 3044]

# A. T. & T. CO. POSTWAR CONVERTIBLE AND STOCK OFFERINGS

| Year of Offering | 1946 | 1947 | 1949 | 1951 | 1952 | 1953 |
|---|---|---|---|---|---|---|
| Dates - Terms Set | Oct. 16, 1946 | Oct. 15, 1947 | Apr. 20, 1949 | Jan. 17, 1951 | May 21, 1952 | Oct. 21, 195 |
| Record for Rights. | Nov. 8, 1946 | Oct. 31, 1947 | May 6, 1949 | Jan. 29, 1951 | June 16, 1952 | Oct. 30, 195 |
| Expiration of Rights | Dec. 16, 1946 | Dec. 15, 1947 | June 20, 1949 | Mar. 19, 1951 | July 31, 1952 | Dec. 10, 195 |
| Type of Security | Conv. 2-3/4s 1961 | Conv. 2-3/4s 1957 | Conv. 3-1/8s 1959 | Conv. 3-3/8s 1963 | Conv. 3-1/2s 1964 | Conv. 3-3/4s 1 |
| Principal Amount Offered | $343,087,700 | $357,532,600 | $394,372,900 | $415,414,000 | $498,656,300 | $602,543,70 |
| Conversion Price | $150 Apr. 15, 1947<br>$148 Oct. 28, 1949<br>$146 July 10, 1950<br>$143.84 Aug. 6, 1952<br>$141.84 Mar. 1, 1955 | $140 Mar. 1, 1948 | $130 Sept. 1, 1949<br>$140 June 20, 1951 | $138 June 1, 1951 | $136 Sept.30,1952 | $136 Feb.9, 19 |
| Plan of Offering | 1 for 6 | 1 for 6 | 1 for 6 | 1 for 7 | 1 for 7 | 1 for 7 |
| Amount Subscribed | $330,208,800 | $348,418,500 | $385,346,400 | $407,898,300 | $493,084,700 | $596,402,80 |
| Amount Unsubscribed* | $12,878,900 | $9,114,100 | $9,026,500 | $7,515,700 | $5,571,600 | $6,140,90 |
| Per Cent Subscribed | 96.2% | 97.5% | 97.7% | 98.2% | 98.9% | 99.0 |
| Date of Last Conversion# | Mar. 1, 1955 | Oct. 29, 1952 | Oct. 29, 1952 | Dec. 15, 1954 | Dec. 15, 1954 | May 1, 195 |
| Amount Unconverted After Call Date | $3,626,600 | $4,093,300 | $2,357,600 | $1,612,100 | $1,505,500 | $548,60 |
| Average Price of Rights | $2.01 | $1.46 | $1.17 | $2.00 | $2.21 | $2.4 |
| No. Shareowners on Record Date | 689,616 | 717,582 | 798,417 | 990,257 | 1,116,714 | 1,258,25 |
| Outstanding shares at date of offering | 20,585,262 | 21,451,950 | 23,662,374 | 29,078,980 | 34,965,941 | 42,176,05 |

* Unsubscribed Convertibles Sold on Market

\# Call Date

Ⓐ Withdrawn from Registration

TREASURY EXH
JANUARY 2, 195

AND STOCK OFFERINGS

| | 1952 | 1953 | 1955 | 1956 | 1958 |
|---|---|---|---|---|---|
| | May 21, 1952 | Oct. 21, 1953 | Aug. 17, 1955 | July 12, 1956 | Jan. 15, 1958 |
| | June 16, 1952 | Oct. 30, 1953 | Aug. 25, 1955 | Sept.14, 1956 | Jan. 24, 1958 |
| | July 31, 1952 | Dec. 10, 1953 | Oct. 13, 1955 | Nov. 5, 1956 | Mar. 12, 1958 |
| 63 | Conv. 3-1/2s 1964 | Conv. 3-3/4s 1965 | Conv. 3-7/8s 1967 | Capital Stock | Conv. 4-1/4s 1973 |
| | $498,656,300 | $602,543,700 | $637,165,800 | $572,615,200 | $718,313,000 |
| 51 | $136 Sept.30,1952 | $136 Feb.9, 1954 | $148 Dec.13,1955<br>$146 Oct.25,1956<br>$144 Nov. 6,1956 | - | $142 May 12, 1958 |
| | 1 for 7 | 1 for 7 | 1 for 8 | 1 for 10 | 1 for 9 |
| | $493,084,700 | $596,402,800 | $633,647,800 | $571,495,600 | $716,239,400 |
| | $5,571,600 | $6,140,900 | $3,518,000 | (A) $1,119,600 | $2,073,600 |
| | 98.9% | 99.0% | 99.4% | 99.8% | 99.7% |
| | Dec. 15, 1954 | May 1, 1956 | Oct. 14, 1957 | - | - |
| | $1,505,500 | $548,600 | $754,600 | - | Not Called |
| | $2.21 | $2.43 | $3.44 | $6.93 | $2.97 |
| | 1,116,714 | 1,258,250 | 1,384,870 | 1,436,582 | 1,604,508 |

34,965,941 42178059 50977214 57264520 64,648170

TREASURY EARNINGS
JANUARY 2, 1959

30 months 5/25/55 - 3/12/58
19,860,000 shares floated
& M + absorbed by market.

[fol. 3045] GOVERNMENT TRIAL EXHIBIT No. 3

Table 9

Open-End Investment Companies

[Which Are Members Of The National Association Of Investment Companies]

1. Sales Of Own Shares, 1948–1957
2. Repurchases Of Own Shares, 1948–1957
3. Net Increase In New Capital, 1948–1957

| Calendar Year | No. of Cos. Year End | Sales Of Own Shares | Repurchases Of Own Shares | Net Increase In New Capital |
|---|---|---|---|---|
| 1948 | 87 | $ 273,787,000 | $ 127,171,000 | $ 146,616,000 |
| 1949 | 91 | 385,526,000 | 107,587,000 | 277,939,000 |
| 1950 | 98 | 518,811,000 | 280,728,000 | 238,083,000 |
| 1951 | 103 | 674,610,000 | 321,550,000 | 353,060,000 |
| 1952 | 110 | 782,902,000 | 196,022,000 | 586,880,000 |
| 1953 | 110 | 672,005,000 | 238,778,000 | 433,227,000 |
| 1954 | 115 | 862,817,000 | 399,702,000 | 463,115,000 |
| 1955 | 125 | 1,207,458,000 | 442,550,000 | 764,908,000 |
| 1956 | 135 | 1,346,738,000 | 432,750,000 | 913,988,000 |
| 1957 | 143 | 1,390,557,000 | 405,716,000 | 984,841,000 |
| 10 Year Totals | | 8,115,211,000 | 2,952,554,000 | 5,162,657,000 |

Source: National Association Of Investment Companies, *Investment Companies, A Statistical Summary*, 1940–1957, Table IV, page 4

[fol. 3046] GOVERNMENT TRIAL EXHIBIT No. 34

Table 4

Dollar Volume (Annual Basis) of Common and Preferred Stock Sales Effected on Registered Securities Exchanges in the United States[1] During Ten Year Period, 1948–1957

| Year | Market Value of Stocks Sold (Millions of Dollars) |
|---|---|
| 1948 | $ 12,882 7 |
| 1949 | 10,714 4 |
| 1950 | 21,777 4 |
| 1951 | 21,256 7 |
| 1952 | 17,327 7 |
| 1953 | 16,660 5 |
| 1954 | 28,075 1 |
| 1955 | 37,868 1 |
| 1956 | 35,018 9 |
| 1957 | 32,059 0 |
| Ten Year Total | $233,640 5 |

[1] The registered securities exchanges are as follows:

| | |
|---|---|
| American Stock Exchange | New Orleans Stock Exchange |
| Boston Stock Exchange | New York Stock Exchange |
| Chicago Board of Trade | Philadelphia-Baltimore Stock Exchange |
| Cincinnati Stock Exchange | Pittsburgh Stock Exchange |
| Detroit Stock Exchange | Salt Lake Stock Exchange |
| Los Angeles Stock Exchange | San Francisco Mining Exchange |
| Midwest Stock Exchange | San Francisco Stock Exchange |
| | Spokane Stock Exchange |

Source: Annual Reports of Securities Exchange Commission and SEC Statistical Bulletin. (See tables entitled "Market Value and Volume Of Sales Effected on Securities Exchanges." Data regarding market value and volume of sales effected on registered exchanges are reported in connection with fees paid under section 31 of the Securities Exchange Act of 1934.)

Note: During the first 10 months of 1958 the aggregate market value of stock sold on Registered Securities Exchanges was $29,868,965,502. See *SEC Statistical Bulletin*, August and December 1958, p. 13.

[fol. 3047] GOVERNMENT TRIAL EXHIBIT NO. 35

Table 5

Asset Growth of Non-Insured Corporate Pension Funds
1920–1957

| Year | Estimated Assets End Of Year | Increase In 5 Year Period |
|---|---|---|
| 1920 | $ 50 Million | — |
| 1925 | 150 " | $ 100 Million |
| 1930 | 550 " | 400 " |
| 1935 | 800 " | 250 " |
| 1940 | 1,100 " | 300 " |
| 1945 | 2,700 " | 1,600 " |
| 1950 | 5,200 " | 2,500 " |

[Sources: *Study Of Savings In The United States* by R. W. Goldsmith and "Fresh Look At Pension Funds" by R. F. Murray in *Trusts And Estates*, November 1955. Statistics derived from these sources are cited in Table 2 (page 25) of *Survey Of Corporate Pension Funds*, 1951–1954, issued by the Securities and Exchange Commission on October 1, 1956.]

| Year | Total Assets Book Value, End Of Year | Increase During Year |
|---|---|---|
| 1951 | $ 6,876 Million | — |
| 1952 | 8,382 " | $1,506 Million |
| 1953 | 10,222 " | 1,840 " |
| 1954 | 12,153 " | 1,931 " |
| 1955 | 14,230 " | 2,077 " |
| 1956 | 16,639 " | 2,409 " |
| 1957 | 19,319 " | 2,680 " |

Source: SEC Statistical Series Release No. 1533 (June 8, 1958), *Corporate Pension Funds*, 1957. See Table 1 at page 4.

Note: Statistics for the years 1951–1957, presented in this table, do not cover non-insured funds of unincorporated business, non-profit institutions, and union administered funds. The survey figures for the years 1954–1957 cited above cover all corporate pension funds (as distinguished from savings and bonus plans) except pension plans administered by insurance companies. For purposes of comparison, data regarding insured pension plans are set forth below:

| Year | Reserves, End Of Year | Increase During Year |
|---|---|---|
| 1951 | $ 6,550 Million | — |
| 1952 | 7,675 " | $1,125 Million |
| 1953 | 8,775 " | 1,100 " |
| 1954 | 9,950 " | 1,175 " |
| 1955 | 11,250 " | 1,300 " |
| 1956 | 12,450 " | 1,200 " |
| 1957 | 14,025 " | 1,575 " |

[Source: Institute Of Life Insurance, *Life Insurance Fact Book, 1958*, page 38.

[fol. 3048] GOVERNMENT TRIAL EXHIBIT No. 36

Table 6

Non-Insured Corporate Pension Funds Distribution of Assets, by Type

(1) Book Value, 1951–1957

(2) Market Value, 1955–1957

| | Book Value, End of Year | | | | | | |
|---|---|---|---|---|---|---|---|
| | 1951 | 1952 | 1953 | 1954 | 1955 | 1956 | 1957 |
| | Millions of Dollars | | | | | | |
| Cash and Deposits | 291 | 265 | 313 | 296 | 343 | 332 | 368 |
| U.S. Govt. Securities | 2,170 | 2,162 | 2,297 | 2,284 | 2,536 | 2,293 | 2,032 |
| Corporate Bonds | 3,125 | 4,142 | 5,181 | 6,359 | 7,225 | 8,704 | 10,392 |
| Preferred Stock | 272 | 331 | 397 | 454 | 510 | 570 | 611 |
| Common Stock | 812 | 1,206 | 1,649 | 2,286 | 2,958 | 3,774 | 4,770 |
| Mortgages | * | * | * | * | 146 | 230 | 313 |
| Other Assets | 206 | 277 | 384 | 473 | 511 | 736 | 833 |
| Total Assets | 6,876 | 8,382 | 10,222 | 12,153 | 14,230 | 16,639 | 19,319 |
| | Per Cent of Total | | | | | | |
| Cash and Deposits | 4.2 | 3.2 | 3.1 | 2.4 | 2.4 | 2.0 | 1.9 |
| U.S. Govt. Securities | 31.6 | 25.8 | 22.5 | 18.8 | 17.8 | 13.8 | 10.5 |
| Corporate Bonds | 45.4 | 49.4 | 50.7 | 52.3 | 50.8 | 52.3 | 53.8 |
| Preferred Stock | 4.0 | 3.9 | 3.9 | 3.8 | 3.6 | 3.4 | 3.2 |
| Common Stock | 11.8 | 14.4 | 16.1 | 18.8 | 20.8 | 22.7 | 24.7 |
| Mortgages | * | * | * | * | 1.0 | 1.4 | 1.6 |
| Other Assets | 3.0 | 3.3 | 3.7 | 3.9 | 3.6 | 4.4 | 7.3 |
| Total Assets | 100.0 | 100.0 | 100.0 | 100.00 | 100.0 | 100.0 | 100.0 |

| | **Market Value, End of Year | | | | | |
|---|---|---|---|---|---|---|
| | 1955 | 1956 | 1957 | 1955 | 1956 | 1957 |
| | $ Millions | | | Per Cent of Total | | |
| Cash and Deposits | 343 | 332 | 368 | 2.1 | 1.9 | 1.8 |
| U.S. Govt. Securities | 2,492 | 2,192 | 1,987 | 15.7 | 12.5 | 10.0 |
| Corporate Bonds | 7,085 | 7,904 | 9,784 | 44.6 | 45.0 | 49.3 |
| Preferred Stock | 523 | 524 | 550 | 3.3 | 3.0 | 2.8 |
| Common Stock | 4,795 | 5,648 | 6,024 | 30.2 | 32.1 | 30.3 |
| Mortgages | 146 | 229 | 313 | .9 | 1.3 | 1.6 |
| Other Assets | 511 | 735 | 833 | 3.2 | 4.2 | 4.2 |
| Total Assets | 15,895 | 17,565 | 19,859 | 100.0 | 100.0 | 100.0 |

*Not available separately. **Not available prior to 1955.

Note: Additional detail regarding aggregate portfolio holdings of common stock reported in the above Table is as follows:

Book Value Basis

| Year | Common Stock of Own Company | | Common Stock of Other Companies | |
|---|---|---|---|---|
| | Portfolio End of Year | Net Change From Prior Year | Portfolio End of Year | Net Change From Prior Year |
| 1951 | $246 Million | — | $ 566 Million | — |
| 1952 | 297 " | $51 Million | 909 " | $343 Million |
| 1953 | 342 " | 45 " | 1,307 " | 398 " |
| 1954 | 382 " | 40 " | 1,904 " | 597 " |
| 1955 | 434 " | 52 " | 2,524 " | 620 " |
| 1956 | 505 " | 71 " | 3,269 " | 745 " |
| 1957 | 584 " | 79 " | 4,187 " | 918 " |

Source: SEC Statistical Series Releases: No. 1426 (12/31/56); No. 1474 (8/16/57); and No. 1533 (6/8/58). Figures set forth in these releases have been rounded and do not necessarily add to total.

---

[fol. 3049] GOVERNMENT TRIAL EXHIBIT NO. 38

Table 8

Non-Insured Corporate Pension Funds Purchases and Sales of Common

| Year | Purchases (Millions of Dollars) | Sales | Net Purchases |
|---|---|---|---|
| 1951 | $ 330 | $ 39 | $ 291 |
| 1952 | 435 | 48 | 387 |
| 1953 | 513 | 74 | 439 |
| 1954 | 738 | 148 | 590 |
| 1955 | 858 | 249 | 609 |
| 1956 | 1,000 | 220 | 771 |
| 1957 | 1,186 | 208 | 978 |
| 7 Year Aggregates | $5,060 | $995 | $4,065 |

Source: SEC Statistical Series Release No. 1533, (June 8, 1958), *Corporate Pension Funds 1957.*

[fol. 3050] GOVERNMENT TRIAL EXHIBIT No. 39

Table 12

Number of General Motors Stockholders,
By Years, 1948–1957

| Year | Number of Stockholders* |
|---|---|
| 1948 | 433,945 |
| 1949 | 434,075 |
| 1950 | 445,573 |
| 1951 | 478,924 |
| 1952 | 487,624 |
| 1953 | 494,632 |
| 1954 | 487,639 |
| 1955 | 565,408 |
| 1956 | 655,076 |
| 1957 | 717,746 |

Source: Annual Reports of General Motors Corporation, 1948–1957.

*The figures cited are for the 4th quarter of the year indicated and are without differentiation as to whether the shareholdings represent common or preferred stock.

Note: With regard to the number of common stockholders, General Motors ranks second among American Corporations. At the beginning of 1958 the ten American companies having the largest number of common stockholders was as follows:

| | |
|---|---|
| American Telephone & Telegraph Co. | 1,660,000 |
| General Motors Corp. | 682,000 |
| Standard Oil Co. (N.J.) | 426,231 |
| General Electric Co. | 380,107 |
| Ford Motor Co. | 280,000 |
| U. S. Steel Corp. | 266,962 |
| Socony Mobil Oil | 201,737 |
| E. I. du Pont | 185,744 |
| Cities Service | 175,442 |
| Radio Corporation of America | 159,627 |

[See *The Exchange*, March 1958, page 9.]

[fol. 3051] GOVERNMENT TRIAL EXHIBIT NO. 40

Table 14

E. I. Du Pont De Nemours & Company

(1) Net Income Per Present Share of Common Stock, Separately Stated As To (i) Net Income From Du Pont Sources And (ii) Net Income From General Motors Corporation Dividends

(2) Disposition Of Net Income Per Present Share Of Common Stock As Between Cash Dividends And Retained Earnings

1948–1957

| | Net Income Per Share Of Common Stock | | | Disposition Of Net Income Per Share Of Common Stock | | | Retained Earnings Per Com. Share Stated As Per Cent Of | |
|---|---|---|---|---|---|---|---|---|
| Year | From du Pont Sources | From General Motors Corp. Dividends | Total | Cash Dividends | Retained Earnings | Total | (1) Total Net Income Per Common Share | (2) Income Per Common Share From du Pont Sources |
| 1948 | 2.33 | .95 | 3.28 | 2.44 | .84 | 3.28 | 25.6% | 36.1% |
| 1949 | 2.84 | 1.68 | 4.52 | 3.40 | 1.12 | 4.52 | 24.8% | 39.4% |
| 1950 | 4.09 | 2.50 | 6.59 | 5.35 | 1.24 | 6.59 | 18.8% | 30.3% |
| 1951 | 3.01 | 1.63 | 4.64 | 3.55 | 1.09 | 4.64 | 23.5% | 36.2% |
| 1952 | 3.07 | 1.63 | 4.70 | 3.55 | 1.15 | 4.70 | 24.5% | 37.5% |
| 1953 | 3.31 | 1.63 | 4.94 | 3.80 | 1.14 | 4.94 | 23.1% | 34.4% |
| 1954 | 5.30 | 2.03 | 7.33 | 5.50 | 1.83 | 7.33 | 25.0% | 34.5% |
| 1955 | 6.51 | 2.75 | 9.26 | 7.00 | 2.26 | 9.26 | 24.4% | 34.7% |
| 1956 | 5.65 | 2.55 | 8.20 | 6.50 | 1.70 | 8.20 | 20.7% | 30.1% |
| 1957 | 5.93 | 2.55 | 8.48 | 6.50 | 1.98 | 8.48 | 23.3% | 33.4% |

Source: See page 34 of 1957 Annual Report of E. I. du Pont de Nemours & Company to its stockholders for all dollar amounts listed above.

[fol. 3052] GOVERNMENT TRIAL EXHIBIT No. 64

Issue No. 313

| | |
|---|---|
| Date of Prospectus: | February 8, 1955 |
| Amount of Issue: | 4,380,683 Shares |
| Title of Issue: | General Motors Corporation Common Stock ($5 Par Value) |
| Agreements Among Underwriters signed: | February 7, 1955 |
| Offering: | |
| To Whom Offered: | Holders of Common Stock |
| Subscription Price: | $75 per share |
| Basis: | 1 share of Common Stock for each 20 shares held. |
| Record Date: | February 8, 1955 |
| Expiration of Rights: | 6:00 o'clock P.M., (E.S.T.), March 7, 1955 |
| Notice Received from Company: | March 9, 1955 |
| Number of Shares subscribed for: | 4,314,256 shares (Includes 493,773 shares subscribed for by the Underwriters upon exercise of Rights purchased and on the exchange of GM Shares, Inc.) |
| Number of Shares of Unsubscribed Stock: | 66,427 shares (467 shares sold back to Company) |
| Disposition of Unsubscribed Stock by Manager: | Offered Publicly |

Concurrently with the offering by the Company, GM Shares, Inc. offered to its stockholders rights to subscribe, at the respective Subscription Prices for a total of 52,356 shares of Class A stock, 11,106 shares of Class B stock and 786 shares of Common Stock, respectively, at the rate of 1 share of Class A stock for each 20 shares of Class A stock, 1 share of Class B stock for each 20 shares of Class B stock and 1 share of Common Stock for each 20 shares of Common Stock held of record at the close of business February 8, 1955.

[fol. 3053] The respective Subscription Prices were as follows:

| | |
|---|---|
| Class A Stock | $150.00 per share |
| Class B Stock | 150.00 " " |
| Common Stock | 134.06 " " |

The subscription offer expired at 3:30 o'clock P.M. (E.S.T.) on March 1, 1955.

Subscription Agent: Mr. L. C. Krauss, 1775 Broadway, New York 19, N.Y.

Each share of Class A and Class B stock of GM Shares, Inc. was exchangeable for 2 shares of common stock of

General Motors Corporation and its pro rata share of the respective surpluses. Each share of common stock of GM Shares, Inc. was exchangeable for 1.7875 shares of common stock of General Motors Corporation (no fractional shares were issued) and of cash in the amount of the pro rata share of General Surplus of the Company.

The offering to stockholders of GM Shares, Inc. was not underwritten.

The shares of GM Shares, Inc. could be exchanged for General Motors Corporation, Common Stock, only at the office of the Company, Wilmington, Delaware.

| | Class A Stock | Class B Stock | Common Stock |
|---|---|---|---|
| Number of Shares Subscribed for | 52,356 | 10,990 | 781 |
| Number of Shares of Unsubscribed Stock | — | 116 | 5 |
| Total | 52,356 | 11,106 | 786 |

Compensation to Underwriters:

$ .75 a share for each of the 4,380,683 shares Underwritten
plus 1.40 a share for each share of Unsubscribed Stock purchased from the Company
plus 1.40 a share for each share acquired upon the exercise of Rights purchased and
plus 1.40 a share for each share of Common Stock acquired through exchange of Class A, Class B and Common Stock of GM Shares, Inc.

Cost to Company: $.03707 a share

The Underwriters agreed that in the event the number of shares of Unsubscribed Stock was less than 438,068, they would use their best efforts to sell such shares at a price above the subscription price and that as to whatever shares they were able to sell by 3:30 o'clock P.M., Eastern [fol. 3054] Standard Time, on April 6, 1955, they would remit to the Company (a) any excess over the subscription price realized on the aggregate of such sales if there were not more than 131,420 shares of Unsubscribed Stock, or (b) 50% of any such excess if there were more than 131,420 shares but less than 438,068 shares of Unsubscribed Stock but not less than 131,420 times the average excess per share over the subscription price. The excess, in either case, to be computed after deducting all expenses (including transfer taxes but *excluding* concessions to dealers) incident to such sales.

| | |
|---|---|
| Expenses of Underwriters to be paid by Company: | None |

Managers Compensation:

11¢ a share for each of the 4,380,683 shares Underwritten
plus 10¢ a share for each share of Unsubscribed Stock purchased from the Company
plus 10¢ a share for each share acquired upon the exercise of Rights purchased and
plus 10¢ a share for each share of Common Stock acquired through exchange of Class A, Class B and Common Stock of GM Shares, Inc.

| | |
|---|---|
| Purchase Price of Unsubscribed Stock: | $75 per share |
| Public Offering Dates of Unsubscribed Stock: | March 9, 1955 and March 15, 1955 |
| Public Offering Prices of Unsubscribed Stock: | $94.50 per share and $92.00 per share |
| Transfer Agents: | Office of Company, New York, N. Y. & Wilmington, Del.<br>National Bank of Detroit, Detroit, Mich.<br>Continental Illinois National Bank & Trust Co. of Chicago, Chicago, Ill. and<br>National Trust Co. Ltd., Montreal & Toronto, Can. |
| Registrars: | Chase National Bank of the City of New York, N. Y.<br>Wilmington Trust Company, Wilmington, Delaware<br>Northern Trust Co., Chicago, Ill.<br>Detroit Trust Co., Detroit, Mich. and<br>Royal Trust Co., Montreal & Toronto, Can. |
| Subscription Agents: | J. P. Morgan & Co. Incorporated, New York, N. Y.<br>National Bank of Detroit, Detroit, Mich.<br>Continental Illinois National Bank and Trust Co. of Chicago, Chicago, Ill. |
| [fol. 3055] | Bank of America National Trust and Savings Association, San Francisco & Los Angeles, Calif. |
| Purchased from:<br>Purchased by: | General Motors Corporation<br>330 Underwriters (See Exhibit for list of Underwriters and distribution of shares purchased) |
| How offered: | For subscription |
| Subscription Books closed: | — |
| Stabilization Transactions: | None |
| Syndicate Bid for Rights entered thru: | Tucker, Anthony & Co. on New York Stock Exchange |
| Number of Dealers: | 361 (Includes 298 Underwriters as Dealers) |
| Payment Dates: | February 24, 1955 and March 16, 1955 |

We made payment to the Company for the Unsubscribed Stock for the accounts of the several Underwriters.

| | | |
|---|---|---|
| Securities Delivered: | | Definitive certificates |
| Agreements with Dealers terminated: | | No agreements |
| Effectiveness of Articles II and III of Agreements Among Underwriters terminated: | | March 9, 1955 |
| Agreements Among Underwriters terminated: | | March 24, 1955 |
| Accounts with Underwriters settled and paid: | | April 27, 1955 |
| Group Sales: | | See List Attached |
| Total Expenses: | $235,242.68 | ($.0537 per share) |
| Transfer Taxes: | Federal and New York State Transfer Tax stamps on 173,656 shares sold to Underwriters and Dealers: | |
| | Charged direct to Underwriters—$7,467.20 | |

[fol. 3056]

GM Shares, Inc.

Rights

| Class A Stock | | | Class B Stock | | | Common Stock | | |
|---|---|---|---|---|---|---|---|---|
| Rights | Prices Net | | Rights | Prices Net | | Rights | Prices Net | |
| 2,080 | $2.375 | 2 24/64 | 11,248 | $2.26 | — | 1,500 | $2.1 | |
| 76,913 | 2.36 | — | 3,000 | 2.15625 | 2 10/64 | 1,000 | 2.06 | |
| 22,500 | 2.28 | — | 6,566 | 2.08 | — | 399 | 2.01 | |
| 275,896 | 2.26 | — | 5,290 | 2.00 | — | 76 | 1.92 | |
| 800 | 2.25 | 2 16/64 | 21 | 1.92 | — | 1,311 | 1.84 | |
| 3,300 | 2.15625 | 2 10/64 | 10,933 | 1.90 | — | 125 | 1.81 | |
| 35 | 2.08 | — | 5,266 | 1.875 | 1 56/64 | 90 | 1.80 | |
| 780 | 2.0625 | 2 4/64 | 1,748 | 1.86 | — | 540 | 1.78 | |
| 106,332 | 2.00 | — | 10,451 | 1.84375 | 1 54/64 | 57 | 1.78 | |
| 18,363 | 1.90 | — | 1,002 | 1.84 | — | 627 | 1.74 | |
| 300 | 1.88 | — | 7,752 | 1.80 | — | 158 | 1.73 | |
| 48,054 | 1.875 | 1 56/64 | 6,088 | 1.78125 | 1 50/64 | 70 | 1.70 | |
| 212 | 1.86 | — | 1,640 | 1.75 | 1 48/64 | 90 | 1.69 | |
| 8,340 | 1.84375 | 1 54/64 | 2,903 | 1.70 | — | 155 | 1.65 | |
| 117,694 | 1.84 | — | | | | | | |
| 8,589 | 1.80 | — | | | | | | |
| 34,651 | 1.78125 | 1 50/64 | | | | | | |
| 31,994 | 1.75 | 1 48/64 | | | | | | |
| 5,147 | 1.70 | — | | | | | | |
| 831,780 | | | 73,908 (8 rights not exercised) | | | 6,192 (12 rights not exercised) | | |
| GM Corp. rights equivalent 1,663,560 | | | GM Corp. rights equivalent 147,800 | | | GM Corp. rights equivalent 11,040 | | |

[fol. 3057] General Motors Corporation

Common Stock

Rights

| Rights | Price Net | | Rights | Price Net | |
|---|---|---|---|---|---|
| 84,363 | $1.1875 | 1 12/64 | 39,827 | $ 93 | — |
| 1,166,514 | 1.18 | — | 34,624 | 90165 | Exchanged |
| 911,669 | 1.171575 | 1 11/64 | 300,229 | 921575 | 59/75 |
| 5,224 | 1.15625 | 1 10/64 | 9,662 | 92 | — |
| 151,616 | 1.140625 | 1 9/64 | 113,623 | 90625 | 58/64 |
| 1,030,190 | 1.13 | — | 8,767 | 90 | — |
| 15,862 | 1.125 | 1 8/64 | 54,531 | 890625 | 57/64 |
| 820,431 | 1.109875 | 1 7/64 | 58,541 | 8750 | 56/64 |
| 8,819 | 1.09375 | 1 6/64 | 416,170 | 859375 | 55/64 |
| 86,000 | 1.09 | — | 47,160 | 84375 | 54/64 |
| 159,147 | 1.078125 | 1 5/64 | Plus Commission | | |
| 5,244 | 1.0625 | 1 4/64 | 276,000 | 921875 | 59/64 |
| 18,262 | .05 | — | 130,900 | 99625 | 58/64 |
| 4,314 | 1.03125 | 1 2/64 | 145,900 | 890025 | 57/64 |
| 19,874 | 1.015625 | 1 1/64 | 92,500 | 875 | 56/64 |
| 821,069 | 1.00 | — | 84,000 | 859315 | 55/64 |
| 917,897 | .99 | — | | | |
| 50,614 | .96875 | 62/64 | ** 8,053,073 (13 rights not exercised) | | |
| 8,201 | .96 | — | | | |
| 21,152 | .953125 | 61/64 | 7,329,073 Total Net | | |
| 243,592 | .95 | — | 724,000 Total plus commission | | |
| 186,225 | .9375 | 60/64 | | | |

| | Rights |
|---|---|
| General Motors Corporation Common Stock Rights: | 8,053,060 |
| GM Shares, Inc. Class A Stock Rights* | 1,663,566 |
| Class B Stock Rights* | 147,800 |
| Common Stock Rights* | 11,040 |
| | ø 9,875,460*** |

*Equivalent in General Motors Corporation, Common Stock Rights.

** Rights purchased at prices ranging from $1.1875 to $.84375 a right, an average price of $1.045 a right, including commission.

*** Rights exercised for 493,773 shares at $75 a share.

[fol. 3058] Analysis of Distribution of Shares

| | Shares | Shares |
|---|---|---|
| Shares received upon exercise of Rights | 402,653 | |
| Shares received in exchange GM Shares, Inc. | 91,120 | |
| Shares acquired by exercise of Rights, released to Underwriters and sold during and after Subscription Period, at prices ranging from $99.00 a share to $93.125 a share, an average price of $96.147 a share, before concession and taxes | | |
| 2/9 101,883 shares at $97.75 | | |
| 2/10 112,680 " " 99.00 | | |
| 2/11 300 " " 97.50 | | |
| 2/14 74,817 " " 95.50 | | |
| 2/15 48,297 " " 95.00 | | |
| 2/16 31,920 " " 93.75 | | |
| 2/17 9,989 " " 93.375 | | |
| 2/18 330 " " 94.75 | | |
| 2/21 1,529 " " 93.875 | | |
| 2/23 41,860 " " 93.50 | | |
| 2/24 35,225 " " 93.125 | | |
| 2/25 100 " " 94.125 | | |
| 2/28 650 " " 94.375 | | |
| 3/1 16,400 " " 94.25 Net | | |
| 3/2 100 " " 95.50 | | |
| 3/9 17,360 " " 94.50 | | 493,440 |
| All less $1.25 a share concession except where noted. | | |
| Shares delivered in exchange for Rights | | 333 |
| Shares of Unsubscribed Stock purchased from the Company at $75.00 a share | 66,427 | |
| Shares sold back to Company at $75.00 a share | | 467 |
| Shares sold at Public Offering on March 9, 1955 at $94.50 a share less $1.25 a share concession | | 63,964 |
| Shares sold at Public Offering on March 15, 1955 at $92.00 a share less $1.25 a share concession | | 1,500 |
| Shares sold on the New York Stock Exchange at various prices | | 406 |
| Total | 560,200 | 560,200 |

[fol. 3059]

Analysis of Distribution of Shares

| | During Subscription Period | After Subscription Period | Total |
|---|---|---|---|
| Institutions | 16,400 | — | 16,400 |
| Exchanged | 333 | — | 333 |
| Underwriters | 442,160 | 32,024 | 524,184 |
| Dealers | 17,520 | 800 | 18,320 |
| Company | — | 467 | 467 |
| On N. Y. Stock Exchange | — | 496 | 496 |
| | 476,413 | 83,787 | 560,200 |

| | | | |
|---|---|---|---|
| Sale and Purchase Account: | | | |
| Cost of 8,053,073 G. M. Corp. Rights, including commission | $ 8,418,816 51 | | |
| Cost of 911,880 GM Shares, Inc. Rights | $ 1,868,794 53 | | |
| Cost of subscription to 402,653 shares of G. M. Corp. at $75.00 a share | $30,198,975 00 | | |
| Cost of subscription to 45,503 shares of GM Shares, Inc. at various prices | $ 6,834,024 54 | | |
| Federal Transfer Tax on GM Shares, Inc. exchanged for shares of G.M. Corp. | $ 227 85 | | |
| Concession of $1.25 a share paid Underwriters and Dealers on 477,040 shares laid-off | $ 596,300 00 | $47,917,138 43 | |
| Proceeds of: | | | |
| 493,440 shares at various prices, as previously shown including 333 shares exchanged (minus 2¢ adjustment) | $47,442,655 92 | | |
| $1.40 a share compensation received from the Company on 493,773 shares acquired upon the exercise of G.M. Corp. Rights purchased and on shares of GM Shares, Inc. acquired through exchange of Class A, Class B and Common Stock | $ 691,282 20 | | |

[fol. 3060]

| | | | |
|---|---|---|---|
| Pro rata share of surpluses received through exchange of GM Shares, Inc., Class A, Class B and Common Stock | $ 1,300 13 | | |
| Received from GM Shares, Inc. proceeds from the sale of General Motors Corporation Common Stock Rights applicable to 8 GM Shares, Inc. Class B Rights and 12 GM Shares, Inc., Common Rights | $ 40 47 | $48,135,278 72 | |
| Net profit transferred to Underwriters | | $ 218,140 29 | |

Union Securities Corporation, Clark, Dodge & Co. and Stillman, Maynard & Co. did not participate in the profit of $20,500, being $1.25 a share concession on the 16,400 shares sold to certain institutions.

| Unsubscribed Stock Account: | | | | | | Sold to: | | |
|---|---|---|---|---|---|---|---|---|
| 467 | shares | sold | at | $75.00 | a share | G. M. Corp. | $ 35,025.00 | |
| 63,964 | " | " | " | 94.50 | " " | Underwriters | 6,044,598.00 | |
| 1,560 | " | " | " | 92.00 | " " | On New York Stock Exchange | 138,000.00 | |
| 200 | " | " | " | 92.00 | " " | | 18,400.00 | |
| 200 | " | " | " | 91.875 | " " | | 18,375.00 | |
| 96 | " | " | " | 91.75 | " " | | 8,808.00 | $6,263,206.00 |

Less:

| | | |
|---|---|---|
| Cost of 66,427 shares at $75.00 a share | $4,982,025.00 | |
| Transfer taxes on 66,427 shares at $.043 a share | 2,856.36 | $4,984,881.36 |
| Amount due Company | | $1,278,324.64 |

The profit due the Underwriters amounted to $10,294.48, which was a $1.40 a share compensation received from the Company on a net amount of 65,960 shares less $1.25 a share concession allowed Underwriters and Dealers on 65,464 shares purchased, less the New York Stock Exchange commission and S.E.C. fee on 496 shares.

[fol. 3061]

The supplement to the Prospectus dated March 9, 1955 was prepared before the final figures were available. Final figures were completed on March 15, 1955.

Syndicate Clearance Fee

| | |
|---|---|
| 1¢ a share on 560,200 shares | $5,602.00 |
| $2.50 a transaction on 558 transactions of rights | 1,395.00 |
| Total | $6,997.00 |

We realized $31,588.00 being the difference between the clearance fee and the New York Stock Exchange non-member commission on 724,000 Rights purchased on the Exchange.

We also realized $183.87 being the difference between the clearance fee and the New York Stock Exchange non-member commission on 496 shares sold on the Exchange.

[fol. 3062] GOVERNMENT TRIAL EXHIBIT No. 66

October 1, 1957.

## Underwriting Spreads on Certain Large Common Stock Offerings

General Motors Corporation

| Date of Offering | Number of Shares Offered | Subscription Price |
|---|---|---|
| February 8, 1955 | 4,380,683 | $75 |
| | | As % of Subscription Price |
| Standby Fee per share | $ .75 | 1.00% |
| Standby Fee per share adjusted for du Pont subscription | .97 | 1.30 |
| Additional fee per share | 1.40 | 1.87 |

General Motors Corporation set a subscription price of $75 a share, which represented a discount of 26% below the then current market price for the common stock of 101⅜. The reaction of the investment community to this subscription price was very favorable, for it had been generally anticipated that the subscription price would be in the range of $80 to $85 a share. The 26% discount represented one of the largest to be found on common stock offerings in recent years, and therefore it was felt that the standby fee could be reduced to reflect the lesser degree of risk in the underwriting. Furthermore, prior to final price negotiations on February 7th, General Motors was advised by E. I. du Pont de Nemours & Co. that the latter planned to exercise their rights to subscribe for 1,000,000 shares out of the total offering of 4,380,683 shares if the subscription price were below $90 per share. For all practical purposes, this meant that the underwriters were assured that 23% of the issue would be subscribed for and that the underwriting involved 3,380,683 shares, rather than 4,380,683 shares, for a total underwriting fee of $3,285,512. Adjusting the standby fee for the revised number of shares, this calculated out to $.97 a share or 1.30% of the subscription price.

The du Pont Co. announced publicly its decision to exercise its rights several days prior to the final price nego- [fol. 3063] tiations and, in fact, did exercise them immediately upon receipt of the rights. There was a definite psychological advantage attached to this news, since it indicated that du Pont was confident enough in General

Motors' future to invest an additional $75,000,000 in that Company. This also decreased tremendously the problem of layoffs which the underwriters had anticipated and helped to provide an aura of success to the offering.

Socony Mobil Oil Company, Inc.

| Date of Offering | Number of Shares Offered | Subscription Price |
|---|---|---|
| January 30, 1957 | 4,379,758 | $45.50 |
| | | As % of Subscription Price |
| Standby Fee per share | $ .85 | 1.87% |
| Additional fee per share | 1.00 | 2.20 |

At the time the underwriting terms were set on the Socony Mobil Oil Company Common Stock offering, the stock market was in an unsettled condition. For example, an underwriting group headed by Smith, Barney & Co. had just completed the underwriting of a stockholders' offering of 1,088,799 shares of Armco Steel Corporation Common Stock. Immediately prior to the filing of the registration statement on this issue, Armco Steel Common Stock sold at $69¼ but had declined to $63⅛ when the underwriting agreements were signed. The subscription price of $56.00 represented a discount of 11.3% below this price. During the subscription period the underwriters laid off over 25% of the issue in a series of layoffs at declining prices and at the conclusion of the subscription period, the common stock was selling only slightly above the subscription price. Within a day or two thereafter, and immediately prior to the setting of the Socony Mobil terms, Armco Steel Common Stock sold below the subscription price.

Realizing that over 36% of the stock had been handled by the underwriters on the previous Socony Mobil offering in 1952, the underwriters expected to have an equally large distributing job to do on this issue. Therefore, it was considered most important to set a selling concession [fol. 3064] which was sufficiently liberal to stimulate the sales organizations of the members of the underwriting group and dealers. A selling concession of $.90 a share was allowed out of the additional fee of $1 on all shares laid off. The transfer tax was 4.9¢ a share and the management fee was 8¢ a share on all such sales, which meant that the first fee was invaded to the extent of 2.9¢ a share

on every share laid off during the subscription period. In essence then, the standby fee had to be adequate to compensate in part, at least, for the marketing problem with which the underwriters were faced.

It should be noted that the subscription price was set at $45.50 a share when the market for Socony Mobil common stock was $53⅛. This represented a discount of 14.4%, which was considerably closer to the market than in the case of the General Motors offering. During the subscription period the stock declined steadily in the face of a weak stock market, and on February 11, during a particularly bad period in the market, orders from underwriters and dealers virtually disappeared. Fortunately, there was a general market rally for the next two days, although Socony Mobil stock itself declined during the same period to its low for the subscription period. By that time orders had built up sufficiently to handle the flow of rights which were purchased over the last several days of the offering.

International Business Machines Corp.

| Date of Offering | Number of Shares Offered | Subscription Price |
|---|---|---|
| May 21, 1957 | 1,050,223 | $220 |
| | | As % of Subscription Price |
| Standby Fee per share | $3.00 | 1.36% |
| Additional fee per share | 6.50 | 2.95 |

An important consideration in arriving at terms in connection with the offering of IBM common stock was the substantial discount of the subscription price below the then current market price. At the time the contract was signed, the stock was selling at $337, and therefore, a [fol. 3065] subscription price, set by the Company, of $220 represented a discount of 34.7%. The market action of the stock during the registration period and prior thereto had been contrary to the more normal pattern in that it had been steadily selling at new highs in the face of such a large offering. At least a portion of this buying interest can be attributed to the various educational meetings which were held throughout the country with underwriters and institutional investors, who thus became more knowledgeable about the Company and its tremendous growth potential.

The substantial discount from the market represented by the subscription price was one of the determining factors in setting a standby fee of $3 or $1.36% of the subscription price, which was second only to the adjusted percentage for General Motors.

A study of the IBM stockholder list had shown that a large portion of the shares were held in relatively few hands and that there might be some sizeable blocks of stock to be distributed during the subscription period. Therefore, the size of the second fee was of considerable importance for we wanted to be in a position to allow an adequate selling commission to underwriters and dealers. To this end, the second fee was set at $6.50 or 2.95% of the subscription price. This liberal selling concession plus the educational program carried out during the registration period enabled us to build up a sufficiently large number of orders from underwriters and dealers to handle with ease all rights which we purchased from large stockholders and in the open market.

---

[fol. 3066] GOVERNMENT TRIAL EXHIBIT No. 67.

MORGAN STANLEY & Co.,
Two Wall Street,
New York 5, N.Y.

December 10, 1954.

General Motors Corporation

We are informed that the Financial Policy Committee has decided that the Corporation should examine further into two methods of obtaining approximately $300,000,000 to $350,000,000 of additional capital in the near future. In previous memoranda we have outlined various methods of raising this amount of new capital. The two methods to be examined into further are (a) a subscription offer of common stock to common stockholders, and (b) a subscription offer of convertible debentures to common stockholders. We shall endeavor to outline briefly some of the advantages and disadvantages of each of these two methods.

Sale of Common Stock

The sale of common stock is the only type of financing which in present markets affords permanent capital in the amounts desired without some considerable delay since stockholder approval would be required for the issuance of a new series of preferred stock bearing a sinking fund or a conversion privilege. The sale of common stock gives the greatest freedom of action not only in future financing but in future business decisions. An industrial company with little or no debt to be repaid has wide latitude in deciding how earnings shall be used, whether they shall be paid out as dividends to stockholders or used for expansion of plants or inventory or for other productive purposes. True the sale of common stock to shareholders means selling stock at a discount from the market. Nevertheless the price obtainable would probably still be a relatively good price when viewed in the light of market prices for the Corporation's stock over recent years and it should also be kept in mind that the stock is being sold to the Corporation's [fol. 3067] own shareholders. If a present stockholder does not wish, or is unable, to take up his shares he can sell his rights in the market for value and report the profit (or loss) for Federal taxes on a capital gains basis, either short term or long term.

It has been our experience that if a company wants additional common stock equity—particularly a large company—it should get it when market conditions permit. Opportunities for common stock financing in large amounts occur less frequently, over a period of years, than opportunities for other types of financing.

There are presently 88,513,817 shares of common stock issued out of an authorized issue of 150,000,000 shares. If shareholders were offered the right to subscribe for 1 new share of common stock for each 20 shares held, 4,425,691 shares of common stock would be offered to stockholders for subscription. The table below shows the proceeds from such sale at several assumed subscription prices.

| Subscription Price | Proceeds before Underwriting Costs and Out-of-Pocket Expenses |
|---|---|
| 70 | $309,798,000 |
| 72 | 318,650,000 |
| 75 | 331,927,000 |

The subscription price of the new shares should be fixed at a reasonable discount from the price at which the stock is selling in the market shortly prior to the effective date of the registration statement. The discount is influenced by many factors including market conditions at the time, the expectations as to earnings, the size and weight of the offering, the concentration of stockholdings and the estimated volume of rights to be offered for sale in the market, the market action of the stock subsequent to the announcement of the offering and during the registration period and the value of the right which the management wishes to offer to its stockholders. The subscription price should be fixed so that (barring unusually adverse developments) the rights will have a market value throughout the subscription period sufficient to induce [fol. 3068] stockholders to exercise them or enable stockholders to sell them. The value of the rights after issuance would fluctuate with the general market and would be affected by the volume of rights offered for sale by stockholders who cannot or do not wish to take up their pro rata share of the new stock.

Often the announcement of a proposed offering of new stock will cause a decline in the market price of the outstanding shares. The extent of the decline is influenced by the size of the new issue and by general market conditions at the time. The size of the issue under consideration is large in dollar amount although the number of new shares to be offered is low in relation to the total number of shares outstanding.

In this case we would recommend thinking at this stage in terms of a subscription price of from 15% to 20% under the market at the time the subscription price is fixed. Under present conditions we suggest consideration of a subscription price of around $75 per share. Attached is a memorandum, Exhibit 1, showing various percentage discounts based on several assumed market prices.

We are attaching a memorandum, Exhibit 2, showing the market action of the common stock since 1946. In 1954 to date, the market price of the stock has fluctuated approximately 36½ points in price, the low being 58¾ on January 4, 1954 and the high being 95¼ on November 4, 1954. The closing price of the stock on December 9, 1954 was 92¼ per share.

We are showing below the theoretical value of the rights based on an offering of 1 new share for each 20 shares held assuming the market and subscription prices indicated.

| Assumed Subscription Price | Theoretical value of the right at an assumed market price of the common stock of | | | | |
|---|---|---|---|---|---|
| | 80 | 82½ | 85 | 87½ | 90 |
| 70 | 476 | 595 | 714 | 833 | 952 |
| 72 | 381 | 500 | 619 | 738 | 857 |
| 75 | 238 | 357 | 476 | 595 | 714 |

If a common stock offering is made we recommend that it be underwritten to insure the receipt of the funds and because of the relatively large dollar size of the new issue and the weight of selling to be absorbed in the market during the subscription period. The decision reached by duPont and possibly some of the other larger shareholders with respect to the shares to which they would be entitled to subscribe would have an important bearing on the whole underwriting set up.

[fol. 3069] We are attaching a memorandum, Exhibit 3, which shows underwriting fees on certain issues of common stocks offered to shareholders for subscription. A study of the memorandum will show that while there are many variations in the details of the arrangements (which details we disregard in this discussion) there are two principal types of underwriting fees in general use.

*Single Type Fee.* One (standby) underwriting fee paid by the company on each share of new stock being offered which includes compensation to the underwriters for the underwriting risk. Out of this single fee the underwriters pay (1) their out-of-pocket expenses (legal, advertising, transfer taxes, etc.) and (2) selling commissions to dealers and underwriters in connection with the distribution to investors of shares of stock acquired by the underwriters through the exercise of rights during the subscription period or remaining unsubscribed at the end of the period.

*Split Type Fee* One (standby) underwriting fee paid by the company on each share of new stock being offered which includes compensation to the underwriters for the underwriting risk and out of which the underwriters pay all their out-of-pocket expenses, plus a second or supplemental fee which is paid by the company to the underwriters on those shares which are acquired by the underwriters through the purchase and exercise of rights during the

subscription period and on the shares remaining unsubscribed at the end of the period.

If the split fee method is used, the first or standby fee payable under such method is lower than the standby fee payable under the single fee method. However, under the split fee arrangement the first fee must be large enough to compensate underwriters for the risks assumed and to pay out-of-pocket expenses. The purpose of the second fee is to make provision for selling commissions and other related expenses incurred in the sale to investors of stock acquired through the exercise of rights or taken up at the end of the subscription period.

Many variations of the single or split fee method can [fol. 3070] be arrived at to take into account special situations. Some issuers prefer a single fee, others a split fee. The single fee has the advantage of being definite and this appeals both to issuers and underwriters in certain cases. On the other hand, the split fee, because it makes a post-facto adjustment, results in a more precise determination of the amount required to reimburse the underwriters for selling commissions. Whether one method would have been cheaper or more expensive than the other cannot be told until the subscription period has expired as the ultimate cost depends on the amount of stock "laid off" and the amount of unsubscribed stock taken up.

At the close of a successful offering, it may be expected that approximately 3% of the shares offered will remain unsubscribed. This residue is principally the result of stockholder inaction or negligence. Under these conditions such shares usually can be sold by the underwriters at a profit over the price at which they are purchased from the issuer. In our underwriting contracts it is usually provided that all such profit (after deducting certain expenses) on shares representing 3% or less of the offering be paid to the issuer. Often it is also provided that on unsubscribed shares representing between 3% and 10% of the offering 50% of the profit, if any, be paid to the company.

*The "Lay Off" Process* In recent years a new technique has been developed in connection with offerings of the kind under discussion. This technique is called "laying off stock" and is handled by the managing underwriter for the account of the underwriting group. The mechanics

are simple but the operation which is briefly summarized below requires skill and judgment.

Assume "rights" on a new stock issue start trading in the market today. Under S. E. C. regulations the market price must be established for a reasonable time, generally one trading day, by buyers and sellers other than the underwriters or the managing underwriter. After the market has been independently established the manager is permitted, under S. E. C. regulation, to make bids for rights for the account of all the underwriters from day to day [fol. 3071] during the balance of the subscription period. To the extent that the manager purchases rights they are exercised by the manager for the account of the underwriting group and the shares of new stock so purchased are then sold during the subscription period to investors through dealers and underwriters. The manager builds up buying interest by getting dealers and underwriters to place orders with him for stock to be sold to their clients. To get such orders a selling commission must be paid on the stock so distributed. This commission runs from 2 to 4 times the regular New York Stock Exchange commission (N.Y.S.E. commission for a stock selling at 90 is 44 cents per share based on a 100 share transaction) and is paid by the manager for the account of the underwriting group and must come out of the underwriting fee.

This technique of laying off stock removes some part (sometimes a considerable part) of the selling pressure on the stock in the market by furnishing a more orderly market for the rights during the subscription period. The purchase of rights by the manager tends to preserve the rights' value and to the extent that it does this, there is benefit to all stockholders as well as to the stockholders who find it necessary to dispose of their rights and so the procedure has become recognized as a proper corporate expenditure benefiting all stockholders. Laying off stock is particularly helpful if a large volume of rights is being offered on the market or if there is a concentration of stock in relatively few hands where the rights will be sold rather than exercised. In the case of large holders of stock who want to sell their rights, permission can be obtained from the New York Stock Exchange for the manager to purchase such rights directly without going through a broker on the

Stock Exchange, and the new stock subscribed for through exercise of the rights so acquired is sold as outlined above.

In this connection you may be interested in the following:

(a) In January 1948, Gulf Oil Company offered 2,269,050 shares to stockholders in the ratio of one new share for each four shares at $51 per share. The market at the time of [fol. 3072] signing the underwriting contract on January 27, 1948 was 61¾ per share. The underwriters purchased and sold to investors (through the acquisition of rights) approximately 1,213,700 shares (about 53% of the total number of shares offered) virtually all of which was acquired through the purchase of rights on stock owned by various Mellon interests. Substantially all of such shares were sold on January 28, 1948 at a price of $59 per share, a fractional discount from the market price existing at the time the offering was made.

(b) In September 1952, Socony-Vacuum Oil Company offered 3,180,188 shares to stockholders in the ratio of one share for each ten shares at $31 per share (the market at the time being 35⅛). The underwriters handled, through the acquisition of rights and the sale of unsubscribed stock, approximately 1,156,000 shares, or over 36% of the offering. A considerable amount of the stock thus marketed represented the holdings of certain large interests.

The underwriting fee, like the subscription price, should be fixed shortly prior to the effective date of the registration statement. The reasonableness of the fee should be judged in the light of such factors as market conditions at the time of its determination, the length of the subscription period, the differential between the market price and the subscription price and the anticipated size of the marketing problem.

For the purposes of the present discussion (assuming a subscription price of approximately 15% under the market and a subscription period of approximately thirty days) it may be adequate for present purposes to use a working figure in the area of 2¼% of the subscription price in considering a single type underwriting fee and, in considering a split underwriting fee, a figure of approximately 1⅓% to 1½% of the subscription price for the first or standby fee plus a second or supplemental fee of 1⅔% to 1¾% of the subscription price on those shares which are acquired

[fol. 3073] by the underwriters through the exercise of rights during the subscription period and on the shares remaining unsubscribed at the end of the period.

The following table indicates the combined underwriting fee (expressed as a percentage of the subscription price) which would be payable under the split fee basis mentioned above assuming that stock is laid off by the managing underwriter in the amounts indicated.

| Stock Laid Off or Unsubscribed | Total Fee at 1⅓% plus 1⅓% | Total Fee at 1½% plus 1¼% |
|---|---|---|
| 10% | 1.50% | 1.68% |
| 20 | 1.67 | 1.85 |
| 30 | 1.83 | 2.03 |
| 40 | 2.00 | 2.20 |
| 50 | 2.17 | 2.38 |

Should the duPont Company advise the Corporation prior to the effective date of the registration statement their intention in regard to the exercising of their rights, this information would be taken into account in fixing the final underwriting terms and an appropriate adjustment made. It is doubtful whether it would be practicable to try to make any such adjustment in regard to the shares held by other large shareholders.

*Sale of Convertible Debentures* Financing by means of convertible debentures is a useful method of financing when the existing ratio of equity is large and the probability of additional large amounts of debt or of additional common equity financing seems both unlikely and unnecessary. In such case no great harm is done if the issue is not converted as the company usually can carry the increased senior capital with ease; and though the overhanging conversion feature may be of some hindrance to future equity financing it is not burdensome. Under certain circumstances and in certain industries it may be a wise method of raising new money when a substantial increase in earnings is expected from the new capital investment, the incidence of which will be delayed for a considerable period. There is temporarily a low carrying rate on the convertible security while the expected increase in earnings gives a good prospect of conversion.

[fol. 3074] If General Motors Corporation wants permanent capital the issuance of a convertible debenture has an advantage over a straight debenture only if it is con-

verted. Otherwise it is nothing but debt and must be paid off. If the debentures are converted into common stock within a reasonably short period after issuance there are two advantages over the direct sale of common stock: first, the carrying charges are less up to the time of conversion, and, second, the conversion price would be fixed somewhat (say, 5% to 10%) above the current market for the stock at the time the issue is sold so that if the security is converted the stock is in effect issued at a higher price. The risk inherent in selling a convertible debenture is that it will not be converted or converted so slowly that it may handicap the Corporation in its future growth by reducing its ability to finance by debt or by the sale of common stock. This risk can be provided against to some degree by fixing a low conversion price, that is, a conversion price only slightly above the market at the time. However, whether or not the debentures are converted is outside the issuer's power to control as it depends on the future market price of the company's stock which in turn will be affected by future earnings, by the amount of dividends that can be paid, by business conditions, by future tax rates, and by the level of stock prices in general. In judging the successful conversion experience of various issuers in the past several years it should be remembered that for the greater part it has been a period of rapid economic growth, that the general market level of common stock prices has increased materially (for example, the Dow-Jones average of industrial stocks rose from about 235 at the end of 1950 to approximately 391 today) that higher earnings were the rule and that increased cash dividends or extra dividends (and in some cases stock splits) were declared by these companies on their common stocks during the conversion period.

As pointed out previously in this memorandum, the risk inherent in the sale of convertible debentures is that the debentures will not be converted. In general, conversion [fol. 3075] cannot safely be forced by redemption unless the common stock of the company is selling, when the proposed redemption is announced, at a price of about 10% to 20% above the effective conversion price. The differential that is necessary will depend among other things on the amount of the issue to be called for redemption and general market and business conditions at the time. To illustrate

this situation, let us assume that the common stock of the Corporation is currently selling at approximately $90 per share, that the conversion price on a new convertible debenture is $100 per common share and that the existing optional redemption price is 103%, so that from the standpoint of forcing conversion the "effective conversion price" is 103% per share. Under such circumstances the common stock of the Corporation would have to be selling at from about $115 to about $125 per share before conversion of a large amount of the debentures could be forced by redemption with any high degree of certainly. Of course if the Corporation were indifferent as to the extent of the conversions this would not be applicable. Holders of convertible debentures in many cases will not convert such debentures into common stock unless forced to do so by redemption. Many common stockholders, other than institutional investors, will not subscribe to convertible debentures because of the relatively low return but instead will sell their rights in the open market. As a result institutional investors such as commercial banks, savings banks, pension funds and insurance companies end up as large holders of convertible debentures through purchases in the market. Many such investors are restricted by law in their holdings of common stock and will relinquish their convertible securities only when forced to do so by redemption. Thus, if convertible debentures are called for redemption a large amount of the debentures will be sold by these investors in the open market or the debentures will be converted and the common stock represented by such debentures will be sold in the market, thereby exerting some pressure on the market price of the common stock. In many cases a contract is entered into between the issuer and a group of underwriters guaranteeing the conversion of the issue being called for redemption. The differential between the effective conversion price and the market price required to obtain [fol. 3076] an underwriting commitment on favorable terms will depend on the amount of the issue to be called and on market and business conditions at the time. Past experience indicates that this differential should generally be in the area of 10% to 15%.

The above comments have been based on the general assumption that the Corporation will continue to grow and

that further capital funds will be needed in the reasonably near future. Should the Corporation run into an extended period when instead of spending large sums on its plant for expansion or modernization it is able to reduce its capital expenditures materially and build up large cash balances from earnings or depreciation moneys, the Corporation could call the convertible debentures for redemption. If the Corporation's stock is selling above the applicable conversion price, the holders of the debentures would probably convert them rather than have them redeemed. However, if the Corporation's stock is selling below the conversion price the debentures would not be converted and in such event the Corporation would have had the use of the additional capital temporarily at a low cost and without diluting the equity of the present stockholders.

If an issue of convertible debentures is to be offered to stockholders for subscription we suggest the offering of approximately $354,055,000 principle amount of debentures on the basis of $4 principal amount of debentures for each share of common stock held. In view of the Corporation's presently outstanding issue of $300,000,000 of Debentures, due January 1, 1979 (sinking fund of $10,000,000 per annum beginning in 1958) we suggest that the Corporation issue thirty year debentures convertible into common stock for only the first ten years of the life of the debentures and with a straight line sinking fund beginning at the expiration of the conversion privilege in an amount required to retire the entire issue by maturity.

[fol. 3077] The subscription price, the coupon rate and the conversion price on the debentures should be fixed shortly before the effective date of the registration statement and should take into account the same factors which would be taken into account in fixing the subscription price for common stock if it were to be issued. The subscription price for the convertible debentures should be fixed so that (barring unusally adverse developments) the rights will have a market value throughout the subscription period sufficient to induce stockholders to exercise them or to sell them. In this case we believe that the terms of the issue should be fixed so that it will sell in the market at a price somewhere between 105 and 112.50 so that the large amount of rights to be sold and the large amount of convertible debentures represented by such rights can be distributed satisfactorily

to investors by the underwriting group during the subscription period by the lay off process described earlier in this memorandum.

In many cases, as in the case of a common stock issue, the announcement of a proposed offering of convertible debentures will cause some decline in the market price of the outstanding shares. The decline is generally not as large as when common stock is being offered. While the size of the issue under consideration is large in dollar amount, the weight of the right is not heavy and we would not anticipate as large a decline in the market price of the outstanding shares as would be the case on the announcement of a new issue of common stock of comparable size.

For the present, we would recommend thinking in terms of a subscription price of 100%, a coupon of 3%, a conversion price of $100 per share and an initial optional redemption price of 103% declining over the life of the obligation.

If a convertible debenture were issued under today's market conditions bearing the maturity, coupon and conversion provisions mentioned above we believe that it would sell in the market initially at a price between $105 to $112.50 [fol. 3078] per $100 debenture.

The following table indicates the theoretical value of the right accruing to one share of common stock to buy $4 principal amount of convertible debentures at a price of 100% of the principal amount based on certain assumed market prices for the convertible debenture.

| Assumed Market Price of the Convertible Debenture | Theoretical Value of the Right |
|---|---|
| 102½ | 10¢ |
| 105 | 20 |
| 107½ | 30 |
| 110 | 40 |
| 112½ | 50 |
| 115 | 60 |

From a comparison of the above figures with the rights' values for the purchase of common stock as shown on page 3 it will be seen that rights to buy convertible debentures may sell at a lower price owing to the somewhat smaller differential between the market price of the debentures when issued and the subscription price. It has been our experience that a convertible debenture issue can be set up in such a way that it will be successful even though the

rights on such debentures do not sell in the market at as high a price as is considered desirable in the case of rights to purchase common stock.

*Effect on Earnings* The following figures show the effect on earnings per share of financing by means of convertible debentures as compared with financing by means of common stock. The comparison is not an exact one since the proceeds (before underwriting costs and out-of-pocket expenses) from the sale of 4,425,691 additional shares of common stock at $75 per share estimated at $331,927,000 would be somewhat less than the estimated proceeds from the sale of approximately $354,055,000 principal amount of convertible debentures at 100%.

| Assumed Amounts of Earnings Per Common Share [1] | Equivalent Earnings Available for Common Stock (000) | Per Share after 1-for-20 Offering [2] | Per Share after Offering of $354,055,000 Convertible Debentures and Issuance of 3,540,550 Additional Shares [3] | |
|---|---|---|---|---|
| | | | Before Conv. | After Conv. |
| $ 8 | $ 708,111 | $ 7.62 | $ 7.94 | $ 7.69 |
| 10 | 885,138 | 9.52 | 9.94 | 9.62 |
| 12 | 1,062,166 | 11.43 | 11.94 | 11.54 |

[1] Based on 88,513,817 shares issued September 30, 1954.
[2] Assumes offering of 4,425,691 shares to stockholders on basis of one share for each twenty shares held.
[3] Based on offering of $354,055,000 of 30 year 3% Convertible Debentures, convertible at $100 per share.

[fol. 3079] In view of the above figures we lean strongly to the sale of common stock directly instead of convertible debentures, first, because of the risk that the debentures would not be converted into common equity in the reasonably near future, and, second, because the minor additional dilution in earnings per share resulting from the sale of common stock directly seems to us to be a small insurance premium to pay for maintaining flexibility in meeting the Corporation's future financial requirements.

*Underwriting Fee* As in the case of the common stock, the underwriting fee on the convertible debentures should be fixed shortly prior to the effective date of the registration statement when the subscription price, the coupon and the conversion price are fixed. The reasonableness of the underwriting fee for the convertible debentures should be judged in the light of market conditions at the time of its determination, the length of the subscription period, the coupon,

the subscription price, the difference between the market price of the common stock and the conversion price, and the anticipated size of the marketing problem.

We are attaching a memorandum, Exhibit 4, which shows underwriting fees on certain issues of convertible debentures offered to shareholders for subscription.

For the purposes of the present discussion and assuming [fol. 3080] conversion terms which we believe would give an initial market price of approximately 105 to 112.50 for the debentures, we suggest consideration of a working figure in the area of 7/8% of the principal amount for the standby fee in considering a single type underwriting fee and, in considering a split underwriting fee, a figure in the area of 5/8% of the principal amount for the first or standby fee plus a second or supplemental fee in the area of 5/8% of the principal amount on those convertible debentures which are acquired by the underwriters through the exercise of rights during the subscription period and on the debentures remaining unsubscribed at the end of the period. As in the case of common stock if the split fee method is used, the first fee or standby fee payable under such method is lower than the standby fee payable under the single fee method. However, under the split fee arrangement the first fee must be large enough to compensate underwriters for the risks assumed and to pay expenses and the second fee is to make provisions for selling commissions and related expenses incurred in the sale to investors of convertible debentures acquired through the exercise of rights or taken up at the end of the subscription period.

The following table indicates the combined underwriting fee which would be payable under the split fee basis mentioned above, assuming that rights are purchased and convertible debentures are laid off by the managing underwriter in the amounts indicated:

| Convertible Debentures Laid Off | Total Fee at 5/8% Plus 5/8% |
|---|---|
| 10% | .69% |
| 20 | .75 |
| 30 | .81 |
| 40 | .88 |
| 50 | .94 |

Should the duPont Company advise the Corporation prior to the effective date of the registration statement their intention with regard to the exercising of their rights, this information would be taken into account in fixing the [Vol. 3081] final underwriting terms and an appropriate adjustment made. It is doubtful whether it would be practicable to try to make any such adjustment in regard to the shares held by other large stockholders.

We have described under the common stock discussion the "Lay Off" process. This technique is also appropriate for the distribution to investors of convertible debentures subscribed to by the underwriting group as a result of the purchase of rights in the open market or from large shareholders.

*Summary of Underwriting Costs* Exhibit 5 sets forth the details of underwriting costs which would be appropriate if the sale of common stock were decided upon. Similar data is given in Exhibit 6 with respect to convertible debentures.

It can be seen that if we assume a common stock offering of 4,425,611 shares with a subscription price of $75 per share and a single underwriting fee of 2¼%, total compensation paid to the underwriting group would be approximately $7,500,000, which includes compensation for the underwriting risk. If the split fee method were adopted, again assuming a subscription price of $75 per share and further assuming that 40% of the shares were distributed through lay offs, total underwriting compensation would run between about $6,600,000 and $7,300,000 depending on the underwriting fees agreed upon. In either case, it is estimated that the group will pay about $350,000 of this compensation to cover its out-of-pocket expenses such as legal fees, advertising costs and transfer taxes. The group will also pay out of the total compensation, in either case, the selling commissions which are necessary to compensate underwriters and dealers for distributing to investors the shares of stock acquired by the underwriters through the purchase and exercise of rights during the subscription period and the unsubscribed shares. If it is assumed that approximately 40% of the issue, or about 1,770,000 shares, will be so distributed selling commissions and related expenses may run on the order of $2,250,000.

Were the Corporation to offer $354,055,000 of convertible [fol. 3082] debentures with a single underwriting fee of 7/8%, the total estimated underwriting compensation would be approximately $3,100,000. If the underwriters were paid a split fee in the amounts suggested and if it was assumed that about 40% of the convertible debentures were redistributed by the lay off procedure the total underwriting compensation would be approximately $3,100,000 or about equal to the compensation that would be paid under the single fee method. In short, underwriting costs would be less under the split fee method if less than 40% of the debentures were laid off and conversely, higher, if a larger percentage were so distributed. Under either method of underwriting compensation the group would pay out of underwriting fees between $250,000 and $350,000 to cover its out-of-pocket expenses.

These lower estimated underwriting fees applicable in the case of convertible debentures reflect the lesser risk inherent in this type of offering as well as the lower selling commissions which would be paid to underwriters and dealers for selling convertible debentures to investors during the subscription period. Assuming that approximately 40% of the issue, or about $141,000,000 principal amount of debentures, would be so distributed, estimated selling commissions and related expenses might run under either a single fee or split fee method of compensation on the order of approximately $900,000, as compared with estimated marketing costs of about $2,250,000 for the distribution of a similar proportion of the common stock issue.

It is our experience in convertible debenture issues that the open market will absorb large amounts of rights without an organized redistribution through the lay off procedure or without selling off materially in price. This is only true, however, if the terms have been fixed properly so that barring unusually adverse developments during the subscription period the rights to subscribe to the new issue continue to have some positive market value (say 25 cents per right or possibly somewhat less). If this should turn [fol. 3083] out to be the case in this instance the amount of debentures distributed by the underwriting group during the subscription period through the purchase of rights

might be limited to handling only very large blocks of rights which might otherwise unduly depress the market.

Tax Status of Proceeds from Sale of Rights to Subscribe to Convertible Debentures

Our counsel are examining into the question whether the proceeds received by stockholders from the sale of rights to subscribe to a convertible debenture issue may be treated tax-wise on a capital gains basis. At the present moment, counsel feel that such proceeds may be taxed as ordinary income.

*Conclusion* It must be recognized that the longer the delay in completing the financing the greater the risk of deterioration in the present good market conditions. Financing by means of straight debt can be completed in the shortest elapsed time and in addition probably is least vulnerable to adverse changes in market conditions or to actions which may be taken by monetary authorities to control credit expansion. Nevertheless, the bond market has been somewhat easier in recent days and it faces a heavy schedule of new offerings prior to February 1, 1955.

In this connection we wish to point out that United States Government Certificates of Indebtedness in the amount of approximately $7,000,000,000 mature on February 15, 1955. Maturities on March 15, 1955 include approximately $5,365,000,000 1½% Notes and $2,611,000,000 2⅞% Bonds due 1960 which have been called for redemption on that date. It is expected that the above securities will be refunded while the approximately $3,733,000,000 1% Tax Anticipation Notes due March 22, 1955 will be paid off in large part, directly or indirectly, by March 15 tax collections. In view of the above it is suggested that U. S. Treasury and Federal Reserve officials be informed of the Corporation's financing plan at some time before the public announcement is made.

[fol. 3084] Financing by means of a convertible issue or by the issuance of common stock will take a longer elapsed period of time to complete and therefore is more subject to a change in the proposed terms if there should be a material downward movement in the stock market prior to the effective date of the registration statement.

If there were a material decline in the stock market prior to the effective date of the registration statement covering an issue of convertible debentures we believe that a lower conversion price would be required and probably under such circumstances an upward revision in the coupon rate would be necessary.

The sale of common stock is the method of financing which would be most affected by a material decline in stock prices or unsettled market conditions or by the establishment of restrictive credit policies. However, the stock is being offered to the Corporation's own stockholders and whatever reduction in subscription price is necessary would benefit such stockholders if they subscribe to the new shares. If they sell their rights they, of course, sell at whatever the market price is at the time.

The following table indicates the small effect on per share earnings based on raising approximately $332,000,000 through the issuance of the number of shares shown below at the subscription prices indicated.

| Number of Shares | Offering Ratio | Subscription Price | Effect on Earnings Based on $8 per Share | $10 per Share | $12 per Share |
|---|---|---|---|---|---|
| 4,425,691 | 1-for-20 | $75.00 | $7.62 | $9.52 | $11.43 |
| 4,658,622 | 1-for-19 | 71.25 | 7.60 | 9.50 | 11.40 |
| 4,917,434 | 1-for-18 | 67.50 | 7.58 | 9.47 | 11.37 |
| 5,206,695 | 1-for-17 | 63.75 | 7.56 | 9.44 | 11.33 |
| 5,532,114 | 1-for-16 | 60.00 | 7.53 | 9.41 | 11.29 |

In considering financing by the common stock method it must be recognized that the market prices for common stocks have risen substantially over the past year as evidenced by the Dow-Jones industrial stock average which [fol. 3085] closed on December 31, 1953 at about 280 and stands now at about 391. If after the announcement of a proposed common stock issue market prices decline to such an extent that the Corporation would not wish to proceed with the common stock financing as planned and wished to issue either a straight debenture or a convertible debenture the change could be made. However, once a registration statement is filed covering a proposed offering it is an unusual procedure to amend the registration statement and follow another plan of financing, but as a theoretical and mechanical matter, the change to another plan could be made. From a policy point of view as far as the Corpo-

ration is concerned it seems unlikely to us that it would shift immediately to some other form of financing, for if conditions were such as to cause the withdrawal of a common stock offering the Corporation would probably want to postpone temporarily the entire financing program.

We recommend the offering of common stock to the Corporation's stockholders for subscription.

Morgan Stanley & Co.

---

[fol. 3086] GOVERNMENT TRIAL EXHIBIT No. 70

An Extract From a Study Entitled

"A Comprehensive Study of College and University Endowment Funds at June 30, 1957"

As prepared by Boston Fund Inc., 111 Devonshire Street Boston 9, Massachusetts.

---

[fol. 3087] Table 4

Ten Largest Common Stock Holdings

The following schedule shows the ten common stocks which were most widely held based on market value. Fifty-six endowment portfolios were used to compute these statistics, and the total value of these endowments exceeded $2,791,000,000.

| Security | No. of Colleges Owning Security | Total Market Value June 30, 1957 (In Millions) |
|---|---|---|
| Standard Oil Company (New Jersey) | 51 | $100.1 |
| General Electric Company | 31 | 42.2 |
| Eastman Kodak Company | 7 | 33.6 |
| Christiana Securities | 12 | 33.1 |
| duPont (E. I.) de Nemours & Co. | 20 | 31.8 |
| General Motors Corporation | 26 | 29.7 |
| Standard Oil Company of California | 22 | 23.8 |
| Gulf Oil Corporation | 19 | 22.9 |
| Aluminium Ltd. | 8 | 21.3 |
| Texas Company | 25 | 19.0 |

[fol. 3088] GOVERNMENT TRIAL EXHIBIT No. 71

An Extract From a Study Entitled

"A Comprehensive Study of College and University Endowment Funds at June 30, 1958"

As prepared by Boston Fund Inc., 111 Devonshire Street, Boston 9, Massachusetts.

---

[fol. 3089]

Table 4

Ten Largest Common Stock Holdings

The following schedule shows the ten common stocks which were most widely held based on market value. Sixty endowment portfolios were used to compute these statistics, and the total value of these endowments exceeded 3 billion dollars.

| Security | No. of Colleges Owning Security | Total Market Value (In Millions) |
|---|---|---|
| Standard Oil Company (New Jersey) | 58 | $ 95.0 |
| Eastman Kodak Company | 9 | 32.5 |
| Texas Company | 31 | 30.9 |
| General Electric Company | 30 | 28.5 |
| Standard Oil Company of California | 23 | 25.3 |
| Gulf Oil Corporation | 21 | 24.4 |
| General Motors Corporation | 21 | 23.6 |
| Christiana Securities | 10 | 20.4 |
| duPont (E. I.) de Nemours & Company | 10 | 20.2 |
| International Business Machines Corp. | 15 | 17.3 |

[fol. 3090]

## Ford Motor Company Common Stock

### Breakdown of Requests for Group Offerings of Ford Motor Company Common Stock from Institutional Accounts

| Type of Account. | Number of Purchasers | Total Number of Shares Subscribed For | Less Cancellations | Net Subscriptions | Total Number of Shares Allotted | Less Cancellations | Net Shares Allotted |
|---|---|---|---|---|---|---|---|
| Investment Trusts | 55 | 652,000 | 78,300 | 573,700 | 306,000 | — | 306,000 |
| Corporate Pension Funds | 106 | 201,800 | 7,600 | 194,200 | 171,000 | 6,000 | 165,000 |
| Life Insurance Companies | 23 | 124,200 | — | 124,200 | 61,000 | — | 61,000 |
| Fire & Casualty Companies | 49 | 227,000 | 15,800 | 211,200 | 184,282 | 4,000 | 180,282 |
| College Endowment Funds | 45 | 184,850 | 600 | 184,250 | 136,500 | — | 136,500 |
| Foundations | 14 | 37,800 | 2,000 | 35,800 | 35,500 | — | 35,500 |
| Charitable Institutions | 40 | 61,200 | 2,200 | 59,000 | 57,500 | — | 57,500 |
| Religious Societies Hospital Funds, etc. | | | | | | | |
| Other Trusts Estates, etc. | 21 | 29,900 | — | 29,900 | 28,000 | — | 28,000 |
| Total | 353 | 1,518,750 | 106,500 | 1,412,250 | 979,782 | 10,000 | 969,782 |

The above tabulation is a recap of preliminary records on group sales to institutions. Subsequent cancellations and additions produced changes in the final record.

[fol. 3091] GOVERNMENT TRIAL EXHIBIT No. 89

Table 11

Annual Price Range of General Motors Common Stock, 1948–1958, Stated in Terms of Equivalents of Present $1 2/3 Par Value Common Stock [1]

| Year | Price Per Share In Terms Of Present $1 2/3 Par Value Common Stock | | |
|---|---|---|---|
| | High | Low | Close |
| 1948 | $11 000 | $ 8 417 | $ 9 792 |
| 1949 | 12 125 | 8 646 | 11 938 |
| 1950 | 18 250 | 11 375 | 15 417 |
| 1951 | 18 000 | 15 333 | 17 333 |
| 1952 | 23 167 | 16 667 | 22 958 |
| 1953 | 23 250 | 17 875 | 19 875 |
| 1954 | 32 917 | 19 583 | 32 625 |
| 1955 | 54 000 | 29 833 | 46 250 |
| 1956 | 49 250 | 40 250 | 44 000 |
| 1957 | 47 500 | 33 125 | 33 500 |
| 1958 | 52 000 | 33 750 | 49 500 |

[1] The tabulation set forth above gives effect to the following stock changes:

Three-for-one split effective September 30, 1955
Two-for-one split effective October 2, 1950

Note: On June 3, 1957, the closing price for General Motors common stock on the New York Stock Exchange was 42½.

l. 3092]

## GOVERNMENT TRIAL EXHIBIT No. 90

### Table 13

### E. I. du Pont de Nemours & Company

### Statement Of Net Operating Income, Other Income, Net Income (After Taxes)

### Cash Dividends And Retained Earnings, By Years, 1948–1957

Years Ended December 31

| | 1948 | 1949 | 1950 | 1951 | 1952 | 1953 | 1954 | 1955 | 1956 | 1957 | 10 Year Total 1948–1957 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | $ | $ | $ | $ | $ | $ | $ | $ | $ | $ | $ |
| Operating Income | 199,345,086 | 247,686,029 | 405,451,520 | 504,631,007 | 505,590,294 | 549,914,912 | 492,718,895 | 597,865,297 | 499,803,213 | 526,596,368 | 4,529,602,621 |
| r Income | | | | | | | | | | | |
| From General Motors Dividends | 45,000,000 | 80,000,000 | 120,000,000 | 80,000,000 | 80,000,000 | 80,000,000 | 100,000,000 | 135,500,000 | 126,000,000 | 126,000,000 | 972,500,000 |
| From Sources Other Than GM | 8,125,450 | 6,169,988 | 11,569,789 | 13,083,629 | 14,312,728 | 18,703,828 | 17,406,427 | 19,567,096 | 17,963,565 | 24,345,509 | 151,248,009 |
| Total, Other Income | 53,125,450 | 86,169,988 | 131,569,789 | 93,083,629 | 94,312,728 | 98,703,828 | 117,406,427 | 155,067,096 | 143,963,565 | 150,345,509 | 1,123,748,009 |
| Operating & Other Income | 252,470,536 | 333,856,017 | 537,021,309 | 597,714,636 | 599,903,022 | 648,618,740 | 610,125,322 | 752,932,393 | 643,766,778 | 676,941,877 | 5,653,350,630 |
| sion For Taxes On Income | 95,024,914 | 120,183,876 | 229,419,396 | 376,970,825 | 375,838,472 | 413,053,474 | 265,739,307 | 321,376,509 | 260,365,470 | 280,331,536 | 2,738,303,779 |
| Income For Period | 157,445,622 | 213,672,141 | 307,601,913 | 220,743,811 | 224,064,550 | 235,565,266 | 344,386,015 | 431,555,884 | 383,401,308 | 396,610,341 | 2,915,046,851 |
| Dividends Paid | | | | | | | | | | | |
| On Preferred Stock | 11,099,825 | 11,099,825 | 11,099,825 | 11,099,825 | 11,099,825 | 11,099,825 | 10,574,825 | 10,049,825 | 10,049,825 | 10,049,825 | 107,323,250 |
| On Common Stock | 108,720,616 | 152,304,689 | 240,756,214 | 160,237,502 | 160,685,947 | 172,569,813 | 250,316,054 | 318,611,861 | 295,875,636 | 296,254,788 | 2,156,333,120 |
| Total Dividends | 119,820,441 | 163,404,514 | 251,856,039 | 171,337,327 | 171,785,772 | 183,669,638 | 260,890,879 | 328,661,686 | 305,925,461 | 306,304,613 | 2,263,656,370 |
| ined Earnings | 37,625,181 | 50,267,627 | 55,745,874 | 49,406,484 | 52,278,778 | 51,895,628 | 83,495,136 | 102,894,198 | 77,475,847 | 90,305,728 | 651,390,481 |

e: Annual Reports on Form 10-K filed by du Pont with the SEC.

[fol. 3093] GOVERNMENT TRIAL EXHIBIT No. 91

Table 15

Dividends Received by Du Pont From General Motors, 1948–1958

(1) On 60,000,000 Present GM Shares of $1 2/3 Par Value Or On Share Equivalents Of Old $5 and $10 Par Value Common Stock.

(2) On 3,000,000 Present GM Shares Of $1 2/3 Par Value Or On Share Equivalents Of Old $5 Par Value Common Stock.

| Year | Dividends Received By Du Pont From General Motors | % Return On Cost (Before Taxes) | Federal Income Taxes Applicable To GM Dividends[1] | Net GM Dividends (After Taxes) Received By Du Pont | % Return On Cost (After Taxes) |
|---|---|---|---|---|---|
| (1) Dividends Received By Du Pont From General Motors On 60,000,000 Present Shares Of Common Stock Of $1 2/3 Par Value Or On Share Equivalents Of Old $10 Par Value And $5 Par Value Stock. The Cost Basis To Du Pont For These Shares Is $57,621,758. | | | | | |
| 1948 | $ 45,000,000 | 78.1 | $ 2,565,000 | $ 42,435,000 | 73.6 |
| 1949 | 80,000,000 | 138.8 | 4,560,000 | 75,440,000 | 130.9 |
| 1950 | 120,000,000 | 208.3 | 7,560,000 | 112,440,000 | 195.1 |
| 1951 | 80,000,000 | 138.8 | 6,090,000 | 73,910,000 | 128.3 |
| 1952 | 80,000,000 | 138.8 | 6,240,000 | 73,760,000 | 128.0 |
| 1953 | 80,000,000 | 138.8 | 6,240,000 | 73,760,000 | 128.0 |
| 1954 | 100,000,000 | 173.5 | 7,800,000 | 92,200,000 | 160.0 |
| 1955 | 130,000,000 | 225.6 | 10,140,000 | 119,860,000 | 208.0 |
| 1956 | 120,000,000 | 208.3 | 9,360,000 | 110,640,000 | 192.0 |
| 1957 | 120,000,000 | 208.3 | 9,360,000 | 110,640,000 | 192.0 |
| 1958 | 120,000,000 | 208.3 | 9,360,000 | 110,640,000 | 192.0 |
| (2) Dividends Received By Du Pont From General Motors On 3,000,000 Present Shares Of $1 2/3 Par Value Common Stock. These Shares, Which Were Acquired Through Exercise Of Subscription Rights In March 1955, Have A Cost Basis To Du Pont Of $75,000,000. | | | | | |
| 1955 | $ 5,500,000 | 7.3 | $ 429,000 | $ 5,071,000 | 6.8 |
| 1956 | 6,000,000 | 8.0 | 468,000 | 5,532,000 | 7.4 |
| 1957 | 6,000,000 | 8.0 | 468,000 | 5,532,000 | 7.4 |
| 1958 | 6,000,000 | 8.0 | 468,000 | 5,532,000 | 7.4 |

[1] For data regarding Federal Income Taxes applicable to GM dividends received by du Pont during the years 1948–1957 see Answer (dated Dec. 23, 1958) made by du Pont to Interrogatory No. 3. For the year 1958 the tax has been computed by applying 7.8 per cent to the amount of GM dividends received.

Note: Aggregate dividends received by du Pont from General Motors during the period under review may be summarized as follows:

| Period | Total Dividends Received | Federal Tax On Intercorporate Dividends | Net GM Dividends After Taxes |
|---|---|---|---|
| 10 years, 1948–1957 | $ 972,500,000 | $71,280,000 | $ 901,220,000 |
| 11 years, 1948–1958 | 1,098,500,000 | 81,108,000 | 1,017,392,000 |

During the period from June 3, 1957 to December 31, 1958, du Pont received $220,500,000 in dividends from General Motors Corporation. After deducting provision for the tax ($17,199,000) on intercorporate dividends, the amount of the net GM dividend to du Pont was $203,301,000.

[fol. 3094] GOVERNMENT TRIAL EXHIBIT No. 92

Issue No. 348

Registered Secondary

| | |
|---|---|
| Date of Prospectus: | April 30, 1956 |
| Number of Shares: | 1,278,833 Shares |
| Title of Issue: | General Motors Corporation Common Stock ($1 2/3 Par Value) |
| Agreements Among Underwriters signed: | April 30, 1956 |
| Agreement with Seller signed: | April 30, 1956 in Wilmington, Del. |
| Offering Date: | April 30, 1956 (4:18 o'clock P.M.) |
| Purchase Price: | $42.40 a share |
| Offering Price: | $43.75 a share |
| Spread: Management Fee | $ .15 a share |
| Underwriters Selling Concession | .30 " .90 " (25¢ reallowance) |
| Total | $1.35 a share |

Concession to Dealers allowed at time of payment.

| | |
|---|---|
| Expenses of Underwriters to be paid by Seller: | None |
| Transfer Agents: | Office of Company, New York, N. Y. & Wilmington, Del., National Bank of Detroit, Detroit, Mich., Continental Illinois National Bank & Trust Co., Chicago, Ill. and National Trust Company, Montreal & Toronto, Canada |
| Registrars: | Chase Manhattan Bank, New York, N. Y. Wilmington Trust Company, Wilmington, Del. Northern Trust Company, Chicago, Ill. Detroit Trust Company, Detroit, Mich. and Royal Trust Company, Montreal & Toronto, Canada |
| Purchased from: | Alfred P. Sloan Foundation |
| Purchased by: | 259 Underwriters (See Exhibit for list of Underwriters and distribution of shares purchased). |
| How Offered: | 100% firm |
| Subscription Books closed: | May 1, 1956 (1:05 o'clock P. M.) |
| Stabilization Transactions: | Commenced April 30, 1956 (Filing not necessary) |

[fol. 3095] Syndicate Bid entered thru:

The following orders were entered on the New York Stock Exchange through Jesup & Lamont:

| Date | Time | Entered Order to Buy | Shares Purchased | Order Cancelled | Time Cancelled |
|---|---|---|---|---|---|
| April 30 | 1:08 PM | 10,000 at 43½ | — | 10,000 | 1:51 PM |
| 30 | 3:08 PM | 10,000 at 43⅝ | — | 10,000 | Close of markets* |
| May 1 | 9:45 AM | 10,000 at 43⅝ | 6,800 at 43⅝ | 3,200 | |
| 2 | 10:00 AM | 10,000 at 43⅝ | 4,700 at 43⅝ | 5,300 | |
| 3 | 10:15 AM | 10,000 at 43⅝ | — | 10,000 | 11:02 AM 5/4/56 |
| 3 | 12:52 PM | 2,000 at 44 | 2,000 at 44 | — | — |
| 4 | 11:02 AM | 1,000 at mkt. | 1,000 at 44⅜ | — | — |
| 4 | 11:20 AM | 3,000 at mkt. | 3,000 at 44¾ | — | — |
| 7 | 9:45 AM | 3,000 at mkt. | 2,800 at 44½ | — | — |
| | | | 200 at 44⅝ | — | — |
| 8 | 9:45 AM | 3,124 at mkt. | 3,100 at 44⅛ | — | — |
| | | | 24 at 44⅜ | — | — |
| | | | 23,624 shares | | |

*This order was also entered on the Mid-West, Los Angeles and San Francisco Stock Exchange through Merrill Lynch, Pierce, Fenner & Beane:

| | |
|---|---|
| Number of Dealers: | 323 (includes 82 Underwriters as Dealers) |
| Payment Date: | May 8, 1956 |
| Payment made to Seller: | May 8, 1956 in Wilmington, Del. |
| Securities Delivered: | Definitive certificates |
| Agreements with Dealers terminated: | No Agreements |
| Effectiveness of Article II and Paragraphs 2 and 3 of Article III of Agreement Among Underwriters terminated: | May 3, 1956 (at close) |
| Agreement Among Underwriters terminated: | May 30, 1956 by limitation |
| Accounts with Underwriters settled and paid: | May 31, 1956 |
| Group Sales: | None |

[fol. 3096] Analysis of Distribution

| | Underwriters | Dealers | Total |
|---|---|---|---|
| Originally Offered | 1,200,552 | 96,305 | 1,296,857 |
| Released or Declined | 2,200 | 400 | 2,600 |
| | 1,198,352 | 95,905 | 1,294,257 |
| Additional Allotment | 7,400 | 800 | 8,200 |
| | 1,205,752* | 96,705 | 1,302,457 |
| Less shares purchased in market | | | 23,624 |
| | | | 1,278,833 |

* Includes 209,154 shares purchased as Dealers.

Underwriters retained, or were allotted as Dealers 94.3%.

Institutional sales made for the accounts of the Underwriters —%.

90¢ per share concession allowed Underwriters as Dealers and Dealers at time of payment on 305,359 shares—$274,823.10.

Federal and New York State Transfer Tax stamps on 282,235 shares charged directly to Underwriters—$11,628.08.

Total Expenses: $66,882.96.

| Trading Account: | | |
|---|---|---|
| Loss of Principal | $36,399.44 | |
| Transfer Tax stamps | 973.31 | $37,372.75 |

---

[fol. 3097] GOVERNMENT TRIAL EXHIBIT No. 93

April 5, 1956

General Motors Corporation
Underwriting Fees

An offering of 1,278,833 shares of common stock would amount:

at 45 to $57,547,485
at 50 to $63,941,650

The common stock of GM is currently selling at 45¼. It has a par value of $1.66⅔ a share and has a current *indicated* regular dividend rate of $2.00 annually. Dividends have been paid quarterly in March, June, September and December generally on the 10th of those months. A dividend of 50¢ was paid March 10, 1956 to stock of record February 16. It is expected the next quarterly dividend will be declared on May 7, will be payable to holders of record May 17 and will be paid on Saturday, June 9. The stock will trade ex-dividend on Friday, May 11.

We understand the earnings statement for the first quarter of 1956 would ordinarily be released on Thursday, April 26.

Volume of trading and price range of GM on the New York Stock Exchange during 1956 has been as follows:

| | | |
|---|---|---|
| January | 1,215,300 Shs. | 46¼–43 |
| February | 714,700 Shs. | 46⅜–42⅜ |
| Week ended March 2 | 192,800 Shs. | 46⅜–44⅝ |
| Week ended March 9 | 161,700 Shs. | 46 –44½ |
| Week ended March 16 | 190,100 Shs. | 48¼–46¼ |

The announcement of registration of an offering of this size may depress the market for GM on the Stock Exchange but the twenty day waiting period would give the market time to adjust itself for the offering.

[fol. 3098] Underwriters' expense are estimated as follows for an issue of this size:

| | | |
|---|---|---|
| Legal fees | $ 35,000 | |
| Advertising | 20,000 | |
| Miscellaneous: printing agreements, confirmations, telephone, telegraph, etc. | 10,000 | |
| | $ 65,000 | equal to 5.08¢ a share. |
| Transfer taxes: | | |
| Federal 12¢ per 100 shs. | | |
| N. Y. State $4 per 100 shs. | 52,688 | equal to 4.12¢ a share. |
| Total | $117,688 | equal to 9.20¢ a share |

The New York Stock Exchange commission at various prices from 45 to 55 is set forth below:

| | |
|---|---|
| 45 | 37½¢ a share |
| 47½ | 38¾¢ |
| 50 | 40¢ |
| 52½ | 40¼¢ |
| 55 | 40½¢ |

There is attached as Exhibit I, a memorandum showing underwriting spreads on registered industrial common stock offerings in excess of $10,000,000 during the period January 1, 1952 through April 3, 1956.

It will be noted in Exhibit I that the only instance in which less than two stock exchange commissions was allowed as the selling concession was the offerings of Owens-Corning Fiberglas common stock in February 1952. This issue was an initial offering to the public of a new company; was in tremendous demand at the time of offering; was priced at 35¾ a share which was the highest price at which

the issue could be qualified under Illinois blue sky laws without being classified as a "speculative security" and was an immediate sell-out being quoted 44/46 on the initial offering day.

In view of the similarity of the circumstances surrounding this proposed offering with the recent offering by the Ford Foundation of Ford Motor Company common stock, certain ratios are explored on the next page.

[fol. 3099] a) The $1.50 gross spread in the Ford issue was 2.325% of the offering price of 64½. A similar percentage of a price—

of 45 would be $1.046, and
of 50 would be $1.163.

It might be noted that if, as rumored, 1,600,000 of the 10,200,000 Ford shares were allocated and sold to Ford auto dealers at the offering price and required no sales effort by the underwriters and if the $15,300,000 gross spread is divided by the 8,600,000 remaining shares for which the underwriters were to find other buyers, the gross spread would have been $1.78 on such shares or 2.76% of the offering price of 64½. A similar percentage of a price—

of 45 would be $1.24, and
of 50 would be $1.38.

b) The $1.00 selling concession in the Ford issue was 1.55% of the offering price of 64½. A similar percentage of a price—

of 45 would be $0.698, and
of 50 would be $0.775.

However, the $1.00 selling concession was 2.4 times the New York Stock Exchange commission at 64½ (41.45¢ a share on round lots). A similar ratio to the New York Stock Exchange commissions on a stock at a price—

of 45 would be $0.90, and
of 50 would be $0.96.

It might be noted that the Ford selling concession was 66⅔ of the gross spread.

The last secondary in General Motors Corporation common stock according to our records occurred on September 21, 1948 when Harriman Ripley & Co., Incorporated and Blyth & Co., Inc. made a *non-registered* offering of 30,000 [fol. 3100] shares at 60⅝. The dollar amount was $1,818,750. The gross underwriting spread was $1.20 or 1.98%, out of which 80¢ was allowed for a selling concession. This 80¢ concession was 2.5 times the 32.08¢ New York Stock Exchange commission then in effect. (New York Stock Exchange commissions were increased November 9, 1953.)

In May, 1954 we advised the Sloan Foundation that for a *non-registered* secondary *with* the stock selling around 71 we could offer 150,000 shares on an agency basis (no commitment) for $1.00 gross or 1.41% (with 85¢ selling) and on a commitment basis for $1.20 gross or 169% (with 80¢ selling).

During the General Motors stockholder offering of February-March 1955, almost 500,000 shares were "laid-off" at prices ranging from 99 down to 93⅛ with a dealer concession of $1.25. This concession was 2.82 times the 44.31¢ New York Stock Exchange commission at 93⅛ and 2.78 times the 44.90¢ New York Stock Exchange commission at 99. It was an important factor in building our "book" for these lay-offs.

Exhibit II attached is a memorandum showing underwriting spreads on non-registered industrial common stock offerings in excess of $10,000,000 during the period January 1, 1952 through April 3, 1956.

Exhibit III attached is a memorandum showing selling concessions allowed on certain "lay-offs" of industrial common stocks offered to stockholders during the same period.

The proposed offering differs from that of the Ford stock because GM already has over 538,000 common stockholders, whereas Ford was a new name for investment portfolios. [fol. 3101] The problem in placing approximately $60,000,000 of a listed stock of a well-known company with over 538,000 common stockholders is resolved essentially by payment of an adequate fee to dealers to find new buyers and persuade present stockholders to increase their holdings. In February and March of 1955 approximately $50,000,000 of GM was placed during the period of the Company's stockholder offering. The lay-off prices of 93⅛ to 99 adjusted for the 3-for-1 split means those new pur-

chasers have a cost base of 31 1/24 to 33 in contrast to the present market price of 45¼.

We believe this block could be placed successfully with a *selling* concession of 90¢ which would be slightly in excess of two times the Stock Exchange commission plus 5¢ to cover the 4.12¢ transfer tax. In addition to cover expenses of the underwriters for their legal counsel, advertising and miscellaneous costs and to compensate their underwriting risk the gross commission should include an additional amount as suggested below. These commissions at 45, 50 and as proposed are as follows:

| | 45 | 50 | Proposed |
|---|---|---|---|
| 2 N.Y.S.E. Commissions | $ .75 | $ .80 | |
| Plus 5¢ to cover tax | .05 | .05 | |
| | $ .80 | $ .85 | $ .90 |
| Plus underwriting compensation | .37½ | .40 | .45 |
| | $1.17½ | 1.25 | $1.35 |

If 15¢ out of the gross spread is charged to underwriters by the manager for its services in managing the issue the fee would amount to $191,824.95. The dollar amount of the gross spread at:

| | Gross Spread |
|---|---|
| $1.17½ | $1,502,628 |
| 1.25 | 1,598,541 |
| 1.35 | 1,726,425 |

[fol. 3102]

II

Our past practice in registered secondary offerings has always involved the use of a prospectus setting forth the offering price. Consideration should be given to use of a "formula basis" type offering which involves setting forth a pricing formula on the cover page of the Prospectus in contrast to the printing of the offering price on the cover page. Under both types of offering, the offering price is a fixed price offering and once the fixed price has been determined the seller has a firm commitment from the underwriters. Use of a formula basis for a secondary offering of a listed stock gives greater flexibility in timing and offering and reduces the necessity of stabilizing the price of the stock to facilitate the offering.

Of sixteen registered common stock offerings shown on Exhibit 1, six were done on a formula basis. Three of the

sixteen offerings were prime offerings by issuing companies (Monsanto Chemical, Kimberly-Clark and Koppers Company); two of these were done on the formula basis. Thirteen of the sixteen offerings were wholly or partially secondary offerings and four of these were done on the formula basis.

The formula basis may or may not have the gross spread fixed prior to printing the prospectus. (Four of the six issues did fix a definite spread). The usual formula is that stock will be offered at a fixed price which shall not be higher than the last sale (regular way) or the last offer, whichever is higher, and not lower than $1.00 under the last sale (regular way) or last bid, whichever is lower. In the Corning Glass Works issue the lower limit was not lower than 50¢ under the last sale or bid. The cover page gives the range of the stock on the New York Stock Exchange for a specified period and the closing price the day before (or a few days before) the date of the prospectus.

[fol. 3103] In the two instances where gross spread had not been fixed, a maximum spread was stated in the text on the cover page. These were the two Aluminum Company of America issues. In one issue the maximum spread became the actual spread, in the other the final spread was 25¢ below the maximum.

Morgan Stanley & Co. managed two registered secondary offerings of over $10,000,000 in 1955 and used the fixed price type of Prospectus. In the case of Warner Lambert, we agreed on Monday, June 13 at 3:45 P.M. with the seller on tentative terms; had underwriters sign agreement among underwriters at 9:15 A.M. on Tuesday, June 14; signed with seller at 9:30 A.M. and with company at 9:30 A.M. and filed price amendment with S.E.C. at 9:45 A.M. requesting effectiveness by noon. The offering price was 34⅜ against a Monday close of 34½. We entered a stabilizing bid for 10,000 shares at 34⅜ at 10:00 A.M. on the New York Stock Exchange but did not purchase any stock on such bid; stock sold at 35 and 34½ on New York Stock Exchange on June 14. We maintained the bid on June 15 but purchased no shares; range that day was 35¼ to 34⅜ and closed at 34⅝.

In the case of American Can Co. we followed a similar time schedule, negotiating with the seller at 3:30 P.M. on Wednesday, October 5; signing agreements among underwriters at 9:00 A.M. on Thursday, October 6; signing con-

tracts with seller and company at 9:30 A.M.; filing the price amendment at 10:00 A.M. and becoming effective at 11:00 A.M. We purchased 1,800 shares stabilizing at 42¾. The offering price was 42¾ against Wednesday's closing price of 42⅞.

If the formula method is used, the registration statement becomes effective before an offering price is finally negotiated with the seller. The final Prospectus includes the underwriters and the selling concession and reallowance (or a maximum selling concession). The underwriters sign agreements authorizing the manager to negotiate the offering price (and, if not set, to negotiate the final gross spread) within a period of days. This permits flexibility in timing the offering, since the issue may be released at 3:30 P.M. on the day set for negotiation with the seller, [fol. 3104] or if the closing price is not satisfactory, negotiations may be postponed and the issue can be released at a time on a following day when the price is satisfactory to both the seller and the underwriters. The advantage of a 3:30 P.M. release is that the issue may be placed prior to opening of New York Stock Exchange on following day and exposure to market drop and possible stabilizing is obviated. It also permits the manager to delay the time of offering until a satisfactory "book" has been built up for the the entire issue. Confirmations may be mailed without waiting for printing of final Prospectuses.

It is not necessary to file any price with the S.E.C. nor even necessary to advise the S.E.C. of the offering price when determined; although price information would be furnished in stabilizing reports to the S.E.C. if stabilizing transactions were effected.

H. B. L.

HBL:CS/CZ (7)

[fol. 3105] GOVERNMENT TRIAL EXHIBIT No. 94

November 8, 1950.

National Bank of Detroit,
660 Woodward,
Detroit 32, Michigan.

GENTLEMEN:

In accordance with trust instruments recently executed, separate funds have been established by General Motors Corporation for its pension plan for hourly-rate employes and its non-contributory retirement plan for salaried employes. Each fund has been allocated to seven trusts to be managed by you and six other banks, The Chase National Bank of the City of New York, Guaranty Trust Company of New York, J. P. Morgan & Co. Incorporated, Mellon National Bank and Trust Company, Old Colony Trust Company and The First National Bank of Chicago. Separate trust instruments have been executed with the trustees and each trustee will manage the funds in accordance with such instruments, one of which relates to the Pension Trust for Hourly-Rate Employes and the other of which relates to the Non-Contributory Retirement Trust for Salaried Employes. The instruments relating to the two separate funds differ in some respects but the form of instrument relating to each fund is the same for the seven trusts involved.

In the selection of the trustees and the determination of the investment powers to be granted to the trustees, consideration was given both the experience of the trustees in managing investments, and also to the investment policies and practices of the trustees. We were pleased to find in the course of our discussions with the proposed trustees that their investment policies and thoughts on these matters were generally in accord with our own ideas.

It was felt that common stocks are an attractive investment for pension funds, having in mind the substantially higher yield obtainable thereon as compared with the yield on fixed income securities. The Corporation realizes that market values of common stock are subject to substantial fluctuations, but it believes that in pension funds of this type where payments into the fund will exceed payments from the fund over many years, it will not be necessary to

[fol. 3106] sell stocks for the sole purpose of providing cash for pension payments, and therefore market fluctuations should be of less fundamental importance than otherwise would be the case.

An investment up to 35% of the combined trust funds for each Plan in common stocks, exclusive of the stocks of banks and insurance companies, and an investment up to 15% of the combined trusts in the discretion of the trustees in preferred stocks and in common stocks of banks and insurance companies appear to be satisfactory to all the trustees and ourselves. There would be a balance of at least 50% of the combined trusts for each Plan for investment in fixed income securities.

Certain limitations on investments in common stocks also appeared to all to be desirable at this time. Investments in the common stocks of any one industry should be limited to 7% of the combined trust funds for each Plan. In addition, it appears desirable to limit the investments in stock of any one company to 2.5% of the combined trust funds for each Plan. If a trustee has any doubt as to the industry classification of any common stock, it may consult with the Coordinator, hereinafter referred to, and his determination shall be conclusive.

It is recognized that these percentages may vary for periods of time, since investments of one type may be more attractive than other available investments during such periods.

The limitations suggested herein with respect to the combined trust funds for each Plan should be applied in the same pattern to each trust fund. However, investments by one or more trustees well within these limitations may make it possible for another trustee or other trustees, upon notice to the Coordinator, to exceed such limitations in the management of their respective trust funds and still maintain the combined trust funds within the overall limitations. The Coordinator should serve as the clearing point on information as to general investment practices of the several trustees.

In allocating the funds as between classes of investments and individual companies for the purposes of the limitations set forth above, valuations should be on a basis, as determined from time to time by each trustee, of either (1) cost or (2) cost or market whichever is lower. No sale need

be made for the specific purpose of maintaining such percentages. It is assumed that the investments in common stocks will be made on a long-term basis and the trustees [fol. 3107] may properly assume for this purpose that the trusts will continue over a long period of years.

Also in order to insure that the trustees and the Corporation will avoid any possible charge that control or management responsibility is being acquired in any company through the pension funds, investments of each trustee in the voting stocks of any one company should not exceed ¾% of any company's voting stocks. A higher percentage limitation of this type of investment may be established by any trustee or trustees, with the approval of the Coordinator, to the extent that any other trustee or trustees do no wish to take full advantage of an investment, with their respective trust funds, of ¾% in the voting stocks of any company and accept a lower percentage limitation, provided that the investments of the combined trust funds in the voting stocks of any one company do not exceed 5% of such company's voting stock.

All of the limitations set forth above will apply, of course, to investments in the stocks of General Motors Corporation or its subsidiaries.

It is recognized that there will be available from time to time private placements, unlisted securities, real estate, leases, mortgages and similar investments which can be purchased at a yield substantially in excess of that obtainable on investments of similar quality but greater marketability. Where such investments are made, they should be justified by a higher yield than is available on standard issues with a ready market.

In view of the general understanding of the trustees and ourselves with respect to investment policies and practices, which will guide the trustees in the management of the respective trusts, the trust instruments confer broad investment powers on the trustees. These instruments, however, may be amended at any time to the extent that it may be desirable, and if, because of changing conditions or even different thinking, the general policies referred to above do not appear to be reasonable either to ourselves or to any of the trustees, or if any differences of opinion arise as to following or deviating from such policies, we and the respective trustees can give consideration to the problem and de-

cide what if any limitations upon the investment powers should be incorporated in the trust instruments, and whether the Corporation or our respective trustees should have the authority and responsibility for the trust investments. Then, if necessary, we can amend the trust instruments accordingly.

[fol. 3108] The Corporation proposes to appoint an investment Coordinator whose duty it will be to maintain contact with the various trustees and within limitations to act as the clearing point for such exchange of information as may be desirable. In setting up such a position, the Corporation does not expect that the trustees will feel it necessary to consult such Coordinator on the purchase of individual securities except where such securities may be of a type not ordinarily purchased by funds of this nature. The Corporation, however, would expect this Coordinator to be consulted on any important changes in investment policy and he would, of course, welcome discussion at any time of any of the investment problems of the trustees.

Enclosed are ten conformed copies of each of the two trust instruments executed by us with you as Trustee, and a copy of each of the trust instruments executed with the other Trustees.

Yours very truly,

Albert Bradley, Executive Vice-President.

(Here follows 1 Photolithograph, side folio 3109)

GENERAL MOTORS CORPORATION
SHARES LISTED: 279,242,444
PAR VALUE: $1.666

1956 DAILY — APRIL — Hugh Beattie

| | | VOLUME | HIGH | | LOW | LAST |
|---|---|---|---|---|---|---|
| | 2 | [illegible] | 46¼ | ✓ | 46 | 46 |
| Noticed A Slow advance ste Sale. Slow Familiar → | 3 | 43200 | 45⅞ | | 45 | 45⅞ |
| | 4 | 43500 | 45⅞ | | 44⅞ | 45⅛ |
| | 5 | [illegible] | 45⅛ | | 45 | 45¼ |
| | 6 | [illegible] | 45⅜ | | 45 | 45⅛ |
| | 9 | 24 000 | 45¼ | | 45⅛ | 45¼ |
| | 10 | 26 100 | 45¼ | | 44⅞ | 45 |
| FILED: SEC report → | 11 | 23 600 | 45⅛ | | 44⅞ | 45⅛ |
| | 12 | [illegible] | 45⅜ | | 45⅛ | 45⅛ |
| | 13 | [illegible] | 45¼ | | 44⅞ | 45 |
| | 16 | [illegible] | 45⅛ | | 44⅜ | 44⅞ |
| First Qtr. Earnings Shares 2.25 → | 17 | [illegible] | 45 | | 44⅞ | 44⅞ |
| | 18 | [illegible] | 45 | | 44⅝ | 44¾ |
| | 19 | 23 900 | 44⅞ | | 44¼ | 44¼ |
| | 20 | [illegible] | 44¾ | | 44¼ | 44⅝ |
| | 23 | [illegible] | 44⅜ | | 44¼ | 44¼ |
| | 24 | [illegible] | 44⅜ | | 44 | 44⅛ |
| Wall St. Journal Shares Unit Steel Report → (Page 3-) | 25 | [illegible] | 44 | | 43½ | 43⅝ |
| | 26 | 29 400 | 44⅛ | | 43⅜ | 44 |
| | 27 ✓ | [illegible] | 44¼ | | 43¾ | 44 |
| Declining Effective 4:00 PM → 43⅜ Low .90 25 Bills) | 30 ✓ | [illegible] | 44¼ | | 43⅝ | 43⅞ |
| MAY | 1 ✓ | 40 900 | 43⅜ | | 43⅜ | 43⅜ |
| | 2 ✓ | [illegible] | 44 | | 43⅜ | 44 |
| | 3 ✓ | 35 500 | 44⅜ | | 43⅜ | 44⅛ |
| | 4 ✓ | 37 500 | 44⅛ | | 44⅛ | 44⅜ |
| | 7 ✓ | [illegible] | 44⅛ | | 44 | 44¼ |
| | 8 ✓ | [illegible] | 44¼ | | 43¾ | 43⅞ |
| | 9 | 22 600 | 44¼ | | 43¾ | 44⅛ |
| | 10 | [illegible] | 44⅛ | | 43⅛ | 43⅜ |
| | 11 | [illegible] | 43⅛ | | 43 | 43 |
| Ex Div. .50 → | 14 | 31 500 | 42⅝ | | 42½ | 42½ |
| | 15 | [illegible] | 42⅝ | | 41⅞ | 42⅛ |
| | 16 | [illegible] | 42 | | 41 | 41½ |
| | 17 | [illegible] | 42¼ | | 41½ | 42¼ |
| | 18 | 33 100 | 43⅛ | | 42⅛ | 42⅜ |
| | 21 | [illegible] | 42⅛ | | 41¾ | 42 |
| | 22 | [illegible] | 41⅜ | | 41⅜ | 41⅜ |
| | 23 | 40 100 | 42⅛ | | 41⅛ | 41⅛ |
| | 24 | [illegible] | 41⅜ | | 41 | 41⅛ |
| | 25 | [illegible] | 41¼ | | 40¾ | 41 |
| | 28 | [illegible] | 41⅛ | | 40¼ ✓ | 40⅝ |

[fol. 3110] GOVERNMENT TRIAL EXHIBIT NO. 112

Offerings Managed or Co-Managed by Morgan Stanley & Co.
January 1, 1950—December 31, 1958

| Number of Offerings | Stocks | Amount |
|---|---|---|
| 96 | Underwritten | $2,429,241,404 |
| 12 | Private Placements, Agency and Dealer Manager | 98,168,236 |
| 108 | | $2,527,409,640 |
| | **Bonds** | |
| 116 | Underwritten | $7,417,854,600 |
| 44 | Private Placement and Agency | 911,670,000 |
| 160 | | $8,329,524,600 |

Offerings Managed or Co-Managed by Others Participated in by
Morgan Stanley & Co.
January 1, 1950—December 31, 1958

| Number of Offerings | Stocks | Amount |
|---|---|---|
| 144 | Underwritten | $3,246,874,014 |
| | **Bonds** | |
| 139 | Underwritten | $8,330,324,100 |

ETBrady/ejs
December 31, 1958

[fol. 3111] GOVERNMENT TRIAL EXHIBIT No. 146

General Motors Corporation

50 Largest Stockholders of Record—August 8, 1955

In Terms of $1⅔ Par Value Common Stock*

| Stockholder | Shares | As % of Shares Outstanding** % |
|---|---|---|
| E. I. du Pont de Nemours & Co.<br>Wilmington, Delaware | 63,000,000 | 22.88 |
| GM Shares, Inc.<br>Wilmington, Delaware | 7,748,529 | 2.81 |
| C. F. Kettering, Incorporated<br>Dayton, Ohio | 2,629,460 | 0.95 |
| Corey & Co.<br>c/o Bank of Montreal, N.Y., N.Y. | 2,410,398 | 0.88 |
| Charles S. Mott<br>Flint, Michigan | 1,998,522 | 0.73 |
| Evelyn D. Mendelssohn and Others, Trustees<br>Detroit, Michigan | 1,843,440 | 0.67 |
| Merrill Lynch, Pierce, Fenner & Beane<br>New York, N. Y. | 1,539,288 | 0.56 |
| King & Co.<br>c/o City Bank Farmers Trust Co.<br>New York, N. Y. | 1,454,760 | 0.53 |
| Sigler & Co.<br>c/o Hanover Bank, New York, N. Y. | 1,350,852 | 0.49 |
| New Castle Corporation<br>New York, N. Y. | 1,255,908 | 0.46 |
| Paxton Mendelssohn, and Others, Trustees<br>Detroit, Michigan | 1,203,000 | 0.44 |
| Citizens Commercial & Savings Bank, Trustee<br>Flint, Michigan | 1,060,407 | 0.39 |
| Salkeld & Co.<br>c/o Bankers Trust Co., New York, N. Y. | 1,015,587 | 0.37 |
| Alfred P. Sloan Foundation, Inc.<br>New York, N. Y. | 866,334 | 0.31 |
| Anderson & Co.<br>c/o Fidelity-Philadelphia Trust Co.,<br>Philadelphia, Pa. | 855,789 | 0.31 |
| [fol. 3112] | | |
| Mac & Co.<br>c/o The Union Trust Company<br>Pittsburgh, Pennsylvania | 855,099 | 0.31 |
| Eddy & Co.<br>c/o Bankers Trust Company<br>New York, N. Y. | 830,454 | 0.30 |
| Trustees of the Massachusetts Investors Trust,<br>Under Decl. of Trust dated March 21, 1924<br>Boston, Mass. | 825,000 | 0.30 |
| Detroit Trust Company, Trustee<br>Detroit, Michigan | 813,045 | 0.30 |
| Charles S. Mott, Trustee<br>Flint, Michigan | 684,000 | 0.25 |
| N. V. Amsterdamsch, Administratiekantoor,<br>Van Amerikaansche Waarden<br>Amsterdam, Netherlands | 618,897 | 0.22 |

*Effective September 30, 1955, each share of $5.00 Par Value Common Stock was reclassified and changed into 3 shares of $1⅔ Par Value Common Stock.

**Based on 275,350,239 shares outstanding.

GOVERNMENT TRIAL EXHIBIT No. 146—Continued

| Stockholder | Shares | As % of Shares Outstanding** |
|---|---|---|
| | | % |
| Steere & Co.<br>c/o Girard Trust Corn Ex. Bank<br>Philadelphia, Pa. | 602,052 | 0.22 |
| Atwell & Co.<br>c/o United States Trust Co.<br>New York, N. Y. | 589,383 | 0.21 |
| Shaw & Co.<br>c/o J. P. Morgan & Co.<br>New York, N. Y. | 588,639 | 0.21 |
| Charles Stewart Harding Mott, Trustee<br>Flint, Michigan | 540,000 | 0.20 |
| Christiana Securities Co.<br>Wilmington, Delaware | 535,500 | 0.19 |
| A. A. Welsh & Co.<br>c/o The Cleveland Trust Co.<br>Cleveland, Ohio | 482,088 | 0.18 |
| Lack & Lindsay<br>c/o Wilmington Trust Co.<br>Wilmington, Delaware | 481,668 | 0.17 |
| [fol. 3113] | | |
| Evelyn Mendelssohn<br>Grosse Pointe Shores, Michigan | 468,414 | 0.17 |
| Safe & Co.<br>c/o Safe Deposit & Trust Co.<br>Baltimore, Maryland | 464,025 | 0.17 |
| Genoy & Co.<br>c/o Guaranty Trust Co.<br>New York, N. Y. | 457,539 | 0.17 |
| St. Louis Union Trust Co., Trustee<br>St. Louis, Missouri | 448,500 | 0.16 |
| H. Rodney Sharp, Trustee<br>Wilmington, Delaware | 445,836 | 0.16 |
| Calvin Pardee Bentley<br>Detroit, Michigan | 416,211 | 0.15 |
| Olen & Co.<br>c/o First National Bank,<br>Chicago, Illinois | 411,333 | 0.15 |
| Cross & Co.<br>c/o The Pennsylvania Co.<br>Philadelphia, Pa. | 410,214 | 0.15 |
| Kane & Co.<br>c/o The Chase National Bank<br>New York, N. Y. | 400,386 | 0.15 |
| Kelly & Co.<br>c/o Guaranty Trust Co.,<br>New York, N. Y. | 400,014 | 0.15 |
| Societe de Banque Suisse<br>Basle, Switzerland | 386,628 | 0.14 |
| Bost & Co.<br>c/o Boston Safe Deposit & Trust Co.<br>Boston, Mass. | 381,834 | 0.14 |
| Trico Products Corporation<br>Buffalo, N. Y. | 378,000 | 0.14 |

*Effective September 30, 1955, each share of $5.00 Par Value Common Stock was reclassified and changed into 3 shares of $1⅔ Par Value Common Stock.
**Based on 275,350,239 shares outstanding.

GOVERNMENT TRIAL EXHIBIT No. 146—Continued

[fol. 3114]

| Stockholder | Shares | As % of Shares Outstanding** % |
|---|---|---|
| Brown Brothers, Harriman & Co.<br>New York, N. Y. | 376,683 | 0.14 |
| Carson & Co.<br>c/o J. P. Morgan & Co.<br>New York, N. Y. | 354,684 | 0.13 |
| Mansell & Co.<br>c/o The United States Trust Co.<br>New York, N. Y. | 353,862 | 0.13 |
| Trusdal & Co.<br>c/o National Bank of Detroit<br>Detroit, Michigan | 352,797 | 0.13 |
| How & Co.<br>c/o Northern Trust Co.<br>Chicago, Illinois | 348,373 | 0.13 |
| Alvin M. Bentley<br>Detroit, Michigan | 337,485 | 0.12 |
| Pitt & Co.<br>c/o Bankers Trust Co.<br>New York, N. Y. | 326,139 | 0.12 |
| May Rockwell Page<br>Bristol, Conn. | 318,816 | 0.12 |
| Cudd & Co.<br>c/o The Chase National Bank<br>New York, N. Y. | 318,276 | 0.12 |

*Effective September 30, 1955, each share of $5.00 Par Value Common Stock was reclassified and changed into 3 shares of $1⅔ Par Value Common Stock.

**Based on 275,350,239 shares outstanding.

[fol. 3115] GOVERNMENT TRIAL EXHIBIT No. 147

Extract from report to the Bonus and Salary Committee from Alfred P. Sloan, Jr., "Employes' Savings—Stock Purchase Program", July 12, 1955.

Stock Requirements for Program

Based on the assumptions used in developing the estimated cost of $16,000,000 for the proposed Program, it is estimated that the stock requirements, at an assumed acquisition market cost of about $125 per share would amount to slightly in excess of 300,000 shares in the first year. These requirements would be increased to the degree that an option were extended to employes who chose to have their savings invested 100% in stock under the alternative previously described.

In view of the fact that it may not be possible or practical to acquire the shares required for this plan in the open market, it has been recognized that it might be necessary to consider the use of newly issued stock for the Program.

[fol. 3116] GOVERNMENT TRIAL EXHIBIT No. 148

Extract from report to the Special Committee To Review Bonus Plan from Albert Bradley, "Review of Bonus Plan to Provide For Use of Newly Issued Stock", January 3, 1957.

Flexibility in Meeting Bonus Stock Requirements

From the point of view of the administration of the Bonus Plan, the use of newly issued stock would provide flexibility in meeting bonus stock requirements. Under the practice of using reacquired treasury stock for bonus purposes, there has always been a possible limiting factor in the background due to the fact that purchases of stock on the open market beyond a certain volume might not be desirable because of the possible effect upon the market price of the stock which might result in a temporarily abnormal condition in the trading market. The attached

Exhibit II shows the number of shares of common stock purchased by General Motors since 1947 in relation to the total shares traded on the New York Stock Exchange. While the experience to date has appeared to be satisfactory, the extent to which purchases of common stock may be made at any given time must necessarily be considered in light of the total volume of trading in General Motors common stock. If the volume of trading should decline markedly from present levels, the stock requirements for bonus purposes might account for a higher percentage of the total shares traded than would be considered desirable.

(Here follows 1 Paster, side folio 3117)

[Vol. 3117]

EXHIBIT II

General Motors Corporation

Shares of General Motors Common Stock Purchased as Percent of Total Traded on New York Stock Exchange #

| | Year | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 1947 | 1948 | 1949 | 1950 | 1951 | 1952 | 1953 | 1954 | 1955 | 1956 |
| Regular Stock Exchange Transactions: | | | | | | | | | | |
| Total Shares Traded | 1,894,178 | 1,926,800 | 1,895,500 | 5,655,300 | 3,639,600 | 2,421,800 | 2,467,000 | 3,217,200 | 7,859,625 | 7,416,900 |
| Shares Purchased by G.M. | 98,600 | 124,200 | 176,800 | 430,200 | 456,500 | 545,000 | 536,200 | 521,800 | 625,900 | 988,600 |
| G.M. Purchases as % of Total | 5.2% | 6.4% | 9.3% | 7.6% | 12.5% | 22.5% | 21.7% | 16.2% | 8.0% | 13.3% |
| Including Shares Purchased but not Included in Stock Exchange Volume: | | | | | | | | | | |
| Total Shares Traded | | | | | 3,659,500 | 2,425,800 | 2,472,100 | 3,217,600 | 7,864,682 | 7,452,513 |
| Shares Purchased by G.M. | | | | | 476,400 | 549,000 | 541,300 | 522,200 | 630,957 | 1,024,213 |
| G.M. Purchases as % of Total | | | | | 13.0% | 22.6% | 21.9% | 16.2% | 8.0% | 13.7% |

| By Months | 1953* | | | 1954* | | | 1955* | | | 1956* | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Total Shares Traded on New York Stock Exchange | Shares Purchased by General Motors | | Total Shares Traded on New York Stock Exchange | Shares Purchased by General Motors | | Total Shares Traded on New York Stock Exchange | Shares Purchased by General Motors | | Total Shares Traded on New York Stock Exchange | Shares Purchased by General Motors | |
| | | Number | As % of Total % | | Number | As % of Total % | | Number | As % of Total % | | Number | As % of Total % |
| January | 210,200 | 39,100 | 18.6 | 284,000 | 48,100 | 16.9 | 445,400 | 31,500 | 7.1 | 1,215,300 | 79,200 | 6.5 |
| February | 210,900 | 40,300 | 19.1 | 207,700 | 47,600 | 22.9 | 359,300 | -0- | — | 724,700 | 80,000 | 11.2 |
| March | 229,600 | 41,100 | 17.9 | 260,400 | 46,500 | 17.9 | 461,000 | 34,000 | 7.4 | 659,500 | 88,900 | 13.5 |
| April | 308,100 | 41,400 | 13.4 | 296,800 | 43,800 | 14.8 | 332,800 | 43,400 | 13.0 | 611,000 | 92,600 | 15.2 |
| May | 166,900 | 43,400 | 26.0 | 251,700 | 42,000 | 16.7 | 245,400 | 44,500 | 18.1 | 915,800 | 80,600 | 8.8 |
| June | 234,300 | 45,500 | 19.4 | 252,000 | 49,400 | 19.6 | 380,825 | 43,300 | 11.4 | 589,200 | 78,500 | 13.3 |
| July | 203,300 | 48,900 | 24.1 | 329,700 | 43,900 | 13.3 | 628,200 | 42,800 | 6.8 | 490,300 | 74,000 | 15.1 |
| August | 182,300 | 48,300 | 26.5 | 270,200 | 44,200 | 16.4 | 280,800 | 37,100 | 13.2 | 446,200 | 73,000 | 16.4 |
| September | 218,000 | 46,900 | 21.5 | 276,700 | 40,900 | 14.8 | 1,023,000 | 31,000 | 3.0 | 423,000 | 90,000 | 21.3 |
| October | 176,200 | 41,200 | 23.4 | 258,300 | 39,000 | 15.1 | 1,484,800 | 108,000 | 7.3 | 460,400 | 90,100 | 19.6 |
| November | 166,900 | 52,700 | 31.6 | 257,400 | 37,500 | 14.6 | 1,343,100 | 99,400 | 7.4 | 471,100 | 88,000 | 18.7 |
| December | 160,300 | 47,400 | 29.6 | 272,300 | 38,900 | 14.3 | 875,000 | 110,900 | 12.7 | 420,400 | 73,700 | 17.5 |

# $10 par value common stock to October 2, 1950; $5 par value common stock through September 1955; $1 2/3 par value common stock thereafter. Data for 1950 consist of the sum of the $10 par value common stock and the $5 par value common stock. Data for 1955 consist of the sum of the $5 par value common stock and the $1 2/3 par value common stock.

* Monthly data are regular Stock Exchange transactions only.

1/2/57

[fol. 3118] GOVERNMENT TRIAL EXHIBIT NO. 149

Common Stock

Size of Holdings by Share Groups

August 14, 1958

| Share Group | Number of Stockholders | Shares | % of Total Stockholders | % of Total Shares |
|---|---|---|---|---|
| 1–9 | 58,554 | 259,142 | 8.15 | 0.09 |
| 10 | 38,702 | 387,020 | 5.39 | 0.14 |
| 11–24 | 71,054 | 1,235,012 | 9.89 | 0.44 |
| 25 | 21,876 | 546,900 | 3.04 | 0.19 |
| 26–49 | 82,185 | 2,847,607 | 11.44 | 1.01 |
| 50 | 34,001 | 1,700,050 | 4.73 | 0.60 |
| 51–74 | 68,833 | 4,257,312 | 9.58 | 1.51 |
| 75 | 9,237 | 692,775 | 1.29 | 0.25 |
| 76–99 | 29,410 | 2,585,761 | 4.09 | 0.92 |
| 100 | 47,899 | 4,789,900 | 6.67 | 1.70 |
| 101–199 | 98,307 | 14,216,517 | 13.68 | 5.04 |
| 200 | 12,098 | 2,419,600 | 1.68 | 0.86 |
| 201–299 | 25,065 | 5,991,595 | 3.49 | 2.13 |
| 300 | 17,793 | 5,337,900 | 2.48 | 1.89 |
| 301–399 | 32,613 | 10,689,712 | 4.54 | 3.80 |
| 400 | 2,575 | 1,030,000 | 0.36 | 0.37 |
| 401–499 | 9,297 | 4,151,987 | 1.29 | 1.47 |
| 500 | 2,452 | 1,226,000 | 0.43 | 0.43 |
| 501–999 | 35,817 | 24,006,249 | 4.98 | 8.52 |
| 1,000 | 1,305 | 1,305,000 | 0.18 | 0.46 |
| 1,001–5,000 | 16,966 | 31,700,187 | 2.36 | 11.24 |
| 5,001–10,000 | 1,274 | 8,813,986 | 0.18 | 3.13 |
| 10,001–100,000 | 1,045 | 27,860,076 | 0.15 | 9.88 |
| 100,001 and Over | 146 | 123,858,536 | 0.02 | 43.93 |
| Total | 718,504 | 281,918,124 | 100.00% | 100.00% |

Average shares per stockholder—392 shares

Common—Page 5

[fol. 3119] GOVERNMENT TRIAL EXHIBIT NO. 151

E. I. Du Pont De Nemours and Company

List of Common Stockholders Holding 5000 Shares or More as of December 31, 1956

| Name | Shares |
|---|---|
| Abbott, Proctor & Paine | 7,672 |
| Everett G. Ackart | 15,603 |
| Garret G. Ackerson, Jr. | 6,734 |
| The Aetna Casualty & Surety Company | 18,700 |
| Aetna Insurance Company | 8,000 |
| Aetna Life Insurance Company | 5,400 |
| All & Co. (Nom. The Fidelity Trust Co.) | 7,288 |
| Alten & Co. (Nom. National Savings & Trust Co.) | 8,593 |
| American National Insurance Co. | 6,600 |
| Andelot, Inc. | 40,668 |
| Anderson & Co. (Nom. Fidelity-Philadelphia Trust Co.) | 202,716 |
| Ashe & Co. | 5,025 |
| Atwell and Co. (Nom. U. S. Trust Co.) | 182,715 |
| Aumend & Company (Nom. Toledo Trust Co.) | 9,547 |
| Bache & Co. | 16,025 |
| Walter W. Bacon | 5,400 |
| Miss Florence Patricia Bailey | 10,967 |
| Baker, Weeks & Co. | 7,063 |
| Isabelle Ball Baker | 8,196 |
| Theo. Baker | 5,216 |
| Edward Ball | 24,012 |
| Band & Co. (Nom. First Wisconsin Trust Co.) | 7,479 |
| The Bank of California, N. A., Seattle, Washington, Trustee U/W of Edward Montgomery Harrington | 6,104 |
| Walter B. Banker | 6,508 |
| Barfox & Co. (Nom. American Trust Company) | 6,888 |
| Ba ow & Company (Nom. Nashville Bank & Trust Co.) | 7,242 |
| C. M. Barton | 10,000 |
| James A. Bayard | 20,000 |
| Walter J. Beadle | 5,480 |
| F. E. Belin | 24,408 |
| Benjamin, Morgan & Jones (Nom. Scranton Lackawanna Trust Co.) | 75,294 |
| Benson & Co. (Nom. Credit Suisse N. Y. Agency) | 19,700 |
| Oliver F. Benz | 5,224 |
| Bessemer Securities Corporation | 15,000 |
| Bessemer Trust Company | 6,000 |
| Birch & Co. (Nom. Old Colony Trust Co.) | 6,423 |
| George P. Bissell Company | 7,200 |
| Julia A. Bissell | 6,379 |
| Clara M. Blum and Norman S. Goetz, Trustees U/W Albert Blum | 20,000 |
| Edith C. Blum | 6,888 |
| Francis H. Blum and John A. Blum, Trs. for Clara May Burns U/A dtd. 8/21/35 | 6,400 |
| Francis H. Blum and John A. Blum, Trs. for Francis Henry Blum U/A dtd. 8/21/35 | 6,400 |
| Francis H. Blum and John A. Blum, Trs. for John Alexander Blum U/A dtd. 8/21/35 | 6,400 |
| Mabel L. Blum | 8,402 |
| Bob & Co. (Nom. Old Colony Trust Co.) | 39,976 |
| Boehm & Co. (Nom. Bankers Trust Co.) | 9,648 |
| William E. Boeing | 12,000 |
| Elmer K. Bolton | 11,522 |
| Bonyman & Company (Nom. New England Trust Co.) | 15,008 |
| Bost & Co. (Nom. Boston Safe Deposit & Trust Co.) | 68,692 |
| Boston Insurance Company | 6,000 |
| Lydia Fuller Bottomley | 9,939 |

GOVERNMENT TRIAL EXHIBIT No. 151—Continued

[fol. 3120]

| N. | Shares |
|---|---|
| Bowen, David & Co. (Nom. Fiduciary Trust Co.) | 33,989 |
| Elsie Ball Bowley | 8,100 |
| Estate of Katharine Fox Bowman, J. F. Bowman, K. B. Farrar, F. E. Bowman, Jr., and V. H. Bowman, Executors | 6,100 |
| Brack & Company (Nom. First Trust Co. of St. Paul) | 15,310 |
| F. W. Bradway | 5,603 |
| D. F. Bremner | 6,964 |
| Vincent A. Bremner | 8,500 |
| Martha J. Fenn Brill | 8,040 |
| Broseco Corporation | 20,000 |
| Brown Brothers Harriman & Co. | 83,724 |
| Dora Sexton Brown | 6,000 |
| Greta Barksdale Brown | 42,000 |
| Marybeth W. Brown | 7,100 |
| Yolande De V. Brown | 10,140 |
| Bruch & Co. (Nom. First Nat'l Bank, Minneapolis) | 12,420 |
| Bucher & Co. (Nom. Guaranty Trust Company of New York) | 6,201 |
| Buckley & Co. (Nom. Fiduciary Trust Co. of New York) | 15,716 |
| Bull and Company (Nom. Wachovia Bank & Trust Co.) | 15,918 |
| Anna R. Butler | 7,600 |
| Calmont & Co. (Nom. American Trust Co.) | 9,627 |
| Carnegie Corporation of New York | 7,500 |
| Donald F. Carpenter | 5,409 |
| Murton Du Pont Carpenter | 19,869 |
| Walter S. Carpenter, Jr. | 36,833 |
| Carson & Co. (Nom. J. P. Morgan & Co.) | 18,592 |
| Catton & Co. (Nom. Second Bank-State Street Trust Co.) | 21,085 |
| Central National Bank of Cleveland | 34,535 |
| A. D. Chambers | 9,678 |
| Ira D. Chambers | 5,195 |
| Ivan F. Chambers | 6,792 |
| Champa & Co. (Nom. The Colorado Nat'l Bank) | 5,560 |
| Charles, Frederic & Company (Nom. Irving Trust Co.) | 12,295 |
| Christiana Securities Company | 12,199,200 |
| Frank E. Christopher | 5,000 |
| Cidanjo Company | 7,232 |
| Citizens Fidelity Bank & Trust Company | 44,693 |
| City Bank Farmers Trust Co., Edith Wells Meyer, Stephen S. Johnson, Trustees U/W Fredrik Fischer Meyer | 30,800 |
| Jeannette Smith Clark | 11,718 |
| Clark & Co. (Nom. Marine National Exchange Bank) | 7,897 |
| Clark, Dodge & Co. | 12,019 |
| Claw Company (Nom. Union Trust Co. of D. C.) | 6,684 |
| Clay, Miller & Co. (Nom. Boston Safe Deposit & Trust Co.) | 8,065 |
| Clem & Co. (Nom. Old Colony Trust Co.) | 29,073 |
| The Cleveland Trust Company and Daniel Bailey Ford, Trustees under agreement with Frances B. Ford dated Aug. 2, 1935 | 8,000 |
| Clooney & Co. (Nom. Fiduciary Trust Co. of New York) | 12,606 |
| Roy G. Clough | 6,440 |
| Cobb and Co. (Nom. The New York Trust Co.) | 8,288 |
| Margaret T. Cole | 7,416 |
| Grace A. Coleman | 9,400 |
| Commercial Insurance Company of Newark, N. J. | 6,000 |
| Conbat Co. (Nom. County National Bank & Trust Co.) | 10,115 |
| The Continental Insurance Company | 22,000 |
| Cooper & Co. (Nom. Commonwealth Trust Co.) | 5,081 |
| Lammot Du Pont Copeland | 65,898 |
| George T. Cottle and Henry D. Winslow Trustees U/W Arthur F. Porter | 8,000 |

GOVERNMENT TRIAL EXHIBIT No. 151—Continued

| Name | Shares |
|---|---|
| Cox & Co. (Nom. The Marine Trust Co. of Western New York) | 19,279 |
| Jasper E. Crane | 8,152 |
| Olive E. Crane | 5,500 |
| [fol. 3121] | 68,917 |
| Credit Suisse | 6,578 |
| Crocker & Co. (Nom. Guaranty Trust Co.) | 65,502 |
| Cross & Co. (Nom. The First Pennsylvania Co.) | 96,798 |
| Cudd & Co. (Nom. The Chase Manhattan Bank) | 83,000 |
| The D. W. W. Corporation | 21,412 |
| H. Gregg Danby | 20,420 |
| John Kenneth Danby | 16,574 |
| Walter Dannenbaum | 26,035 |
| Robert Ensign Darling | 9,329 |
| Davis & Co. (Nom. Chicago Title & Trust Co.) | 8,239 |
| Dean & Co. (Nom. First National Bank of Jersey City) | 1,217,920 |
| Delaware Realty and Investment Co. | |
| Delaware Trust Company, Walter Blackson and Emile F. du Pont, Trustees for Ernest du Pont, Jr., U/A dated Aug. 4, 1936 | 15,412 |
| Delaware Trust Company, Walter Blackson and Emile F. du Pont, Trustees for Alberta du P. Thompson U/A dated Aug. 4, 1936 | 15,880 |
| Delaware Trust Company, Walter Blackson and George W. Long, Trustees for Anne T. du Pont under agreement dated 8/4/36 | 22,800 |
| Delaware Trust Company, Walter Blackson and George W. Long, Trustees for Samuel Francis du Pont U/A dated August 4, 1936 | 18,312 |
| Delaware Trust Co., Anne Alexandrine du Pont and John Hemphill, Trustees for Anne Alexandrine du Pont U/W Archibald M. L. du Pont | 11,000 |
| Delaware Trust Company, Carolyn L. du Pont and John Hemphill, Trustees for Carolyn L. du Pont U/W Archibald M. L. du Pont | 11,000 |
| Delaware Trust Co., Elizabeth Heyward du Pont & John Hemphill, Trs. for Elizabeth H. du Pont U/W Archibald M. L. du Pont | 22,000 |
| Delaware Trust Company, Patricia du Pont and John Hemphill, Trustees for Patricia du Pont U/W Archibald M. L. du Pont | 11,000 |
| Delaware Trust Company, Marie du Pont Levering & John Hemphill, Trs. for Marie du Pont Levering U/W Archibald M. L. du Pont | 11,000 |
| Delaware Trust Company, Trustee for Jean Liceter du Pont under instrument dated July 12, 1927 | 28,932 |
| Delaware Trust Company, Trustee for William du Pont, Jr., under instrument dated May 25, 1926 | 98,900 |
| Delaware Trust Company, Trustee for Marion du Pont Somerville under instrument dated May 25, 1926 | 154,000 |
| Delaware Trust Company, Trustee U/W William du Pont, Sr. | 1,162,588 |
| Delaware Trust Company and Walter Blackson, Trustees for Anne T. du Pont U/W Ernest du Pont | 16,100 |
| Delaware Trust Company and Walter Blackson, Trustees for Samuel Francis du Pont, U/W Ernest du Pont | 10,708 |
| Delaware Trust Company and Walter Blackson, Trustees for Alberta du Pont Thompson U/W Ernest du Pont | 11,060 |
| Delaware Trust Company and John Hemphill, Trustees for Anne Alexandrine du Pont under agreement dated Aug. 14, 1934 | 6,400 |
| Delaware Trust Company and John Hemphill, Trustees for Carolyn L. du Pont under agreement dated Aug. 14, 1934 | 6,400 |
| Delaware Trust Company and John Hemphill, Trustees for Marie E. du Pont under agreement dated Aug. 14, 1934 | 6,400 |
| Delaware Trust Company and John Hemphill, Trustees for Patricia du Pont under agreement dated Aug. 14, 1934 | 6,400 |
| Demey & Co. (Nom. Belgian-American Bank & Trust Co.) | 15,471 |
| Denzel & Co. (Nom. Fiduciary Trust Co. of New York) | 18,256 |

## GOVERNMENT TRIAL EXHIBIT No. 151—Continued

| Name | Shares |
|---|---|
| Victorine du Pont Dent | 16,156 |
| Dent & Co. (Nom. Guaranty Trust Company of New York) | 14,060 |
| Albert E. P. De Saissac | 5,372 |
| Detmer Securities Corp. | 9,600 |
| Dolan & Co. (Nom. Laidlaw & Co.) | 6,340 |
| [fol. 3122] | |
| Dolling & Co. (Nom. Wheeling Dollar Savings & Trust Co.) | 7,525 |
| Dominick & Dominick | 66,644 |
| Don & Co. (Nom. Old Colony Trust Co.) | 49,800 |
| Don & Co. (Nom. Commerce Trust Co.) | 21,100 |
| Jessie W. Donahue | 10,000 |
| Dooling & Co. (Nom. First National City Bank) | 23,576 |
| Miss Louise I. Doyle | 9,776 |
| Mabel W. Dunham | 7,900 |
| Dunmovin Corporation | 86,000 |
| Alfred V. du Pont | 10,639 |
| Charles Everett du Pont | 6,113 |
| E. I. du Pont de Nemours & Company | 107,637 |
| Elise H. du Pont | 8,500 |
| Elizabeth Everett du Pont | 16,738 |
| Ernest du Pont, Jr. | 10,000 |
| Estate of Eugene du Pont, Eugene du Pont, 3rd, Nicholas Ridgely du Pont and Edward H. Porter, Jr., Executors | 7,798 |
| Eugene du Pont, 3rd | 18,244 |
| Eugene E. du Pont | 27,816 |
| Francis I. du Pont & Co. | 26,576 |
| H. F. du Pont | 91,877 |
| Henry B. du Pont | 12,721 |
| Irenee du Pont | 12,000 |
| Jane Holcomb du Pont | 8,000 |
| Josie Ball du Pont | 77,133 |
| Marcella M. du Pont | 7,124 |
| Nicholas R. du Pont | 14,988 |
| Pierre S. du Pont | *11,255 |
| Pierre S. du Pont, 3rd | 5,530 |
| S. Hallock du Pont | 15,960 |
| William du Pont, Jr. | 8,000 |
| Dwyer and Co. (Nom. City Bank Farmers Trust Co.) | 141,428 |
| Angus B. Echols | 8,223 |
| Ectrd & Company (Nom. The Equitable Trust Co.) | 5,943 |
| Eddy & Co. (Nom. Bankers Trust Co.) | 241,971 |
| Natalie W. du Pont Edmonds | 8,093 |
| Effenbee & Company (Nom. Florida Nat'l Bank) | 43,564 |
| Egger & Co. (Nom. The Chase Manhattan Bank) | 44,316 |
| Gertrude L. Eliason | 5,000 |
| James B. Eliason | 28,912 |
| Ellery & Co. (Nom. Fidelity Union Trust Co.) | 9,915 |
| John S. Ellsworth | 11,545 |
| Employers Mutual Liability Insurance Company of Wisconsin | 5,700 |
| Ensey & Co. (Nom. Northwestern National Bank of Minneapolis) | 20,023 |
| C. A. Englan l & Co. (Nom. Chemical Corn Exchange Bank) | 25,102 |
| Equitable Security Trust Company and Edward H. Porter, Jr., Trustees for Amelia F. du Pont U/W Eugene du Pont | 152,924 |
| Estabrook and Co. | 6,604 |

*At December 31, 1956, 11,225 shares of du Pont Common were held of record by Pierre S. du Pont, deceased. These shares have since been transferred outside the "Du Pont Family".

GOVERNMENT TRIAL EXHIBIT No. 151—Continued

| Name | Shares |
|---|---|
| Fahnestock & Co. | 6,616 |
| Fait and Company (Nom. N. W. National Bank & Trust Co.) | 11,341 |
| Mildred Fanning | 6,600 |
| Farnum & Co. (Nom. Bankers Trust Co.) | 9,473 |
| Alberta B. Farrington | 10,900 |
| James Morison Faulkner | 5,400 |
| Bessie H. Fay | 23,260 |
| Federal Insurance Company | 13,000 |
| Samuel S. Fels Fund | 5,342 |
| Harriet D. Fenn | 26,700 |
| William H. Fenn, 3rd | 7,328 |
| William H. Fenn, 3rd and Martha J. Fenn Brill, Trustees for Martha J. Fenn Brill U/W William H. Fenn | 6,480 |
| William H. Fenn, 3rd and Martha J. Fenn Brill, Trustees for William H. Fenn, 3rd U/W William H. Fenn | 6,480 |
| [fol. 3123] | 37,728 |
| Frederika B. Ferris | 15,000 |
| The Fidelity and Casualty Company of New York | 50,000 |
| Fidelity-Phenix Fire Insurance Company of New York | 24,188 |
| Fidelity-Philadelphia Trust Co., Trustee under deed of Trust of Philip F. du Pont dated August 11, 1927 | 44,576 |
| Fidelity-Philadelphia Trust Company, Trustee U/W of Alexis I. du Pont for Elizabeth du Pont Bayard | 175,600 |
| Fidelity-Philadelphia Trust Company Trustee under the will of Philip F. du Pont | 39,860 |
| Finat & Co (Nom. The First National Bank of Chicago) | 5,500 |
| Fisk & Co. (Nom. Manufacturers Trust Co.) | 5,000 |
| The Florida Nat'l Bk. of Jacksonville & The Barnett Nat. Bk. of Jacksonville, Trs. U/A with J. B. du Pont dtd. 11/20/50 | 22,000 |
| The Fla. Nat. Bk. of Jacksonville & The Barnett Nat. Bank of Jacksonville Trs. U/A with Jessie B. du Pont dtd. 11/22/49 | 764,280 |
| The Florida Natl. Bk. of Jacksonville, Jessie Ball du Pont, E. Ball and E. Dent, Trs. U/W Alfred I. du Pont | 27,842 |
| J. M. Forbes and Co. | 6,400 |
| Daniel B. Ford | 57,438 |
| Foster & Co. (Nom. Provident Trust Co.) | 8,000 |
| John F. Frawley & Co. (Nom. Second Bank-State Street Trust Co.) | 14,979 |
| Anne Maxwell Frazier | 50,248 |
| Freer & Co. (Nom. Continental Illinois National Bank & Trust Co.) | 13,400 |
| Freya, Fanning & Co. | 10,000 |
| Alvan T. Fuller, Jr. | 7,180 |
| Peter Fuller | 8,182 |
| The Fuller Foundation, Inc. | 11,657 |
| Gale & Co. (Nom. Harris Trust & Savings Bank) | 17,988 |
| Gales and Company | 5,500 |
| Gem & Co. (Nom. Old Colony Trust Co.) | 76,767 |
| Genoy & Co. (Nom. Guaranty Trust Co.) | 28,708 |
| Gerrish & Company (Nom. Second Bank-State Street Tr. Co.) | 7,296 |
| Robt. S. Gerstell | 15,379 |
| Gill & Co. (Nom. Fiduciary Trust Co. of N. Y.) | 40,540 |
| Girard Trust Company and Julia du Pont Andrews, Trs. U/A with J. du Pont Andrews dtd. 7/20/37 | 19,100 |
| Girard Tr. Co. & Morris Duane, Trs. U/W F. G. du Pont as appointed by 8th Par. U/W E. du Pont Taney | 20,900 |
| Girard Trust Company and Morris Duane Trustees U/W Eleanor du Pont Taney | 7,283 |
| Girard Trust Corn Exchange Bank, Trustee u/Deed of Trust from James N. Andrews, Jr., dtd. 6/24/52 as amended 5/1/56 | 8,188 |
| Ernest K. Gladding | |

## GOVERNMENT TRIAL EXHIBIT No. 151—Continued

| Name | Shares |
|---|---|
| Joel E. Goldthwait | 9,021 |
| Goodbody & Co. | 9,454 |
| Goodwin & Co. (Nom. Royal Trust Co.) | 14,619 |
| Louise I. Granger | 13,328 |
| Green, Ellis & Anderson | 8,550 |
| Theodore Gruener, Tr. U/A with Elizabeth Bailey Gruener dtd. 7/16/48, as amended 10/25/56 | 5,950 |
| Gunn & Co. (Nom. The Chase Manhattan Bank) | 8,363 |
| Gunther & Company (Nom. Swiss American Corp.) | 105,654 |
| F. J. Haffner & Co. (Nom. The Cleveland Trust Company) | 8,565 |
| Margaret V. Haggin | 8,000 |
| Halle & Stieglitz | 6,751 |
| Hallgarten & Co. | 6,926 |
| Ham & Co. (Nom. Old Colony Trust Co.) | 5,842 |
| Hamac & Company (Nom. State Planters Bank & Trust Co.) | 11,367 |
| Hamann Estates, Inc. | 63,300 |
| John Hancock Mutual Life Insurance Company | 13,500 |
| [fol. 3124] | |
| Leonard C. Hanna, Jr. | 8,000 |
| Hare & Co. (Nom. Bank of New York) | 105,334 |
| Elizabeth F. Harrington | 19,304 |
| Margaret Jane Harrington | 6,048 |
| Willis F. Harrington | 53,244 |
| Willis F. Harrington, Jr. | 5,958 |
| Harris, Upham & Co. | 20,999 |
| Blanche L. R. Harris | 5,400 |
| William A. Hart | 11,341 |
| Hartford Accident & Indemnity Co. | 6,500 |
| Hartford Fire Insurance Company | 15,500 |
| Hartford National Bank & Tr. Co., Robert Darling & R. E. Darling, Trs. for Robert Darling 26th Clause U/W J. W. E. Darling | 6,076 |
| Hartford National Bank and Tr. Company, Robert Darling and R. E. Darling, Trs. for R. E. Darling 27th clause U/W J. W. E. Darling | 12,000 |
| Harvard & Co. (Nom. The New England Trust Co.) | 9,753 |
| Amory L. Haskell | 7,012 |
| Amory L. Haskell and Anne Haskell Ellis Trustees for Amory L. Haskell U/W Margaret Riker Haskell | 8,000 |
| Harold C. Haskell | 10,254 |
| Carl A. Hasslacher | 7,580 |
| Hayden, Stone and Co. | 5,618 |
| Heil & Co. (Nom. United States Trust Co.) | 17,901 |
| Mary Fuller Henderson | 9,837 |
| Vera White Henning | 13,244 |
| Margaret Post Henry | 6,100 |
| H. Hentz & Co. | 6,757 |
| Herr & Company (Nom. Fidelity Trust Co.) | 89,017 |
| Walter E. Hewins, Samuel D. Warren, and Thomas Cardiner, Trs. for Caroline W. Thomas et al U/D of Tr. dtd. 4/12/20 | 6,000 |
| James Victor Hightower | 7,900 |
| Hill & Company (Nom. Old Colony Trust Co.) | 9,190 |
| Frederick Whiley Hilles | 5,028 |
| Frederick Whiley Hilles, Tr. for Susan Ensign Hilles et al U/A with Susan A. E. Morse dtd. 11/20/35 | 12,000 |
| Susan Morse Hilles | 33,000 |
| Estate of Ralph Hochstetter, Manufacturers and Traders Trust Co. and Helmut Elsasser, Exec. | 5,000 |
| Homeopathic Hospital Asso. of Del. Legatee U/2nd Codicil of the Last Will & Test. of E. du Pont Probated 12/23/54 | 10,000 |

## GOVERNMENT TRIAL EXHIBIT No. 151—Continued

| Name | Shares |
|---|---|
| Hooper & Company (Nom. Crocker First Natl. Bank) | 11,302 |
| Hornblower & Weeks | 7,063 |
| How & Company (Nom. The Northern Trust Co.) | 80,587 |
| Hurley and Co. (Nom. First National City Bank) | 44,831 |
| Mary Helen Hurlimann | 6,045 |
| Hussey & Co., A Partnership (Nom. Grace Nat'l Bank) | 9,987 |
| E. F. Hutton & Co. | 17,893 |
| Ince & Co. (Nom. Guaranty Trust Co. of New York) | 11,076 |
| Louise H. Ingalls | 6,600 |
| Thomas S. Ireland | 8,300 |
| James Foundation of New York, Inc. | 6,000 |
| Jaquith & Co. (Nom. Marine Midland Trust Co.) | 23,007 |
| Earle F. Johnson | 35,008 |
| Emily D. Johnson | 5,432 |
| Johnson and Company (Nom. Phoenix State Bank & Tr. Co.) | 5,958 |
| Grace V. Johnston | 10,000 |
| Johol & Co. (Nom. American Security & Trust Co.) | 8,960 |
| Kane & Co. (Nom. The Chase Manhattan Bank) | 152,249 |
| Mary B. Kannally | 8,600 |
| [fol. 3125] | |
| Mary Buckner Kelland | 6,344 |
| Kelly & Co. (Nom. Guaranty Trust Co.) | 37,623 |
| Kentucky Trust Company | 10,278 |
| Kidder, Peabody & Co. | 6,457 |
| King and Co. (Nom. City Bank Farmers Trust Co.) | 379,505 |
| Kingsley & Co. (Nom. Guaranty Trust Co.) | 28,586 |
| Laura W. Kirsch | 7,300 |
| Max C. Knake | 5,636 |
| Kuhn, Loeb & Co. | 9,343 |
| Hattie Kutz | 9,000 |
| Lack & Lindsay (Nom. Wilmington Trust Co.) | 1,070,263 |
| Laidlaw & Co. | 8,485 |
| Laird, Bissell & Meeds | 12,447 |
| Laird and Company, Corporation | 9,977 |
| Lake & Company (Nom. Manufacturers Trust Company) | 54,143 |
| F. La Motte, Jr. | 30,325 |
| Fanny C. Lancaster | 7,600 |
| Lane & Co. (Nom. The First Nat'l Trust & Savings Bank) | 8,999 |
| Law & Co. (Nom. Miners National Bank of Wilkes-Barre) | 6,241 |
| Lazard Freres & Co. | 29,688 |
| Maurice du Pont Lee | 5,162 |
| Leeds & Company (Nom. The Bridgeport-City Trust Co.) | 9,933 |
| Lehman Bros. | 19,388 |
| Walter S. Lenk | 6,000 |
| Lerche & Co. (Nom. Bank of New York) | 17,633 |
| Le Roy & Co. (Nom. National Newark & Essex Bank) | 11,542 |
| Leslie & Co. (Nom. Irving Trust Company) | 28,405 |
| Edmond E. Lincoln | 5,270 |
| Lincoln Bank and Trust Company | 11,383 |
| Lincoln Rochester Trust Company, Trustee Paragraph 2, of the Codicil of Will of George D. B. Bonbright | 18,000 |
| Lind & Co. (Nom. Irving Trust Co.) | 5,300 |
| Catherine Lindsay | 7,000 |
| Live & Co. (Nom. The Central Trust Co.) | 11,816 |
| Eleanor H. Livingston | 9,582 |
| Carl M. Loeb, Rhoades & Co. | 20,478 |
| Mary Ensign Lovejoy | 12,500 |
| Low & Co. (Nom. Old Colony Trust Co.) | 16,855 |
| Lowell & Co. (Nom. Guaranty Trust Co. of N. Y.) | 13,505 |

GOVERNMENT TRIAL EXHIBIT No. 151—Continued

| Name | Shares |
|---|---|
| Lynn & Co. (Nom. Guaranty Trust Co.) | 23,000 |
| Mac & Co. (Nom. Mellon National Bank & Trust Co.) | 179,162 |
| F. S. Mac Gregor | 22,808 |
| Mansell & Co. (Nom. United States Trust Co. of N. Y.) | 124,358 |
| Map and Company (Nom. First & Merchants Natl. Bank) | 11,892 |
| Mara & Co. (Nom. Bank of Montreal) | 5,440 |
| Massachusetts Investors Growth Stock Fund, Inc. | 13,000 |
| Warren H. McBryde | 7,700 |
| Anne Andrews McIntyre | 7,282 |
| A. Haskell McMannis | 15,600 |
| Mellon Natl. Bank & Trust Company, Tr. of Westinghouse Electric Corp. Pension Fund U/A dated Jan. 1, 1951 | 5,800 |
| Evelyn Mendelssohn | 8,000 |
| Mercantile Trust Company | 5,002 |
| Mercer, Williams & Co. (Nom. Fiduciary Trust Co.) | 23,013 |
| Merrick and Co. (Nom. The New York Trust Co.) | 87,227 |
| Merrill Lynch, Pierce, Fenner & Beane | 114,722 |
| Emmy R. Mertens | 6,704 |
| Mertrus & Co. (Nom. Mercantile Trust Co.) | 8,973 |
| Merts & Moyer (Nom. Wilmington Trust Company) | 203,491 |
| Metacomet Company (Nom. B. M. C. Durfee Trust Co.) | 6,430 |
| [fol. 3126] | |
| The Metropolitan Casualty Insurance Company of New York | 6,000 |
| Miami Corporation | 9,000 |
| Caroline H. Miller | 12,000 |
| Imogene R. Miller | 6,544 |
| Adele Conway Mills | 17,650 |
| Mills & Co. (Nom. Drexel & Co.) | 12,851 |
| Milo & Co. (Nom. City Nat'l Bank & Trust Co. of Chicago) | 5,412 |
| John J. Moran | 7,100 |
| Claire R. Mudge | 31,052 |
| N. V. Administratiekantoor Voor Handel En Nijverheid | 10,477 |
| Nap & Co. (Nom. Safe Deposit & Trust Co.) | 12,567 |
| Nay & Co. (Nom. First National City Bank) | 22,921 |
| New York Life Insurance Company | 14,000 |
| Niagara Fire Insurance Company | 25,000 |
| Francis T. Nichols | 12,000 |
| Nom & Co. (Nom. Fletcher Trust Co.) | 10,526 |
| Nom & Co. (Nom. Union National Bank of Pittsburgh) | 31,753 |
| Northwestern University, An Illinois Corporation | 10,104 |
| Paul J. Nowland | 5,000 |
| The Nypen Company, Inc. | 5,000 |
| J. W. Old | 6,875 |
| Old Colony Trust Company, Henry R. Guild and Quincy A. Shaw, Trustees U/W Quincy A. Shaw | 5,200 |
| Olen and Co. (Nom. First National Bank) | 60,181 |
| Elisabeth S. Oliver | 5,810 |
| Elisabeth S. Oliver, Ledlie W. Young, Alexander P. Reed, David M. Gilmore and Thomas N. Griggs, Trs. U/W John C. Oliver | 19,500 |
| Olsen & Co. (Nom. National Shawmut Bank) | 39,786 |
| One & Co. (Nom. The New England Trust Co.) | 8,530 |
| O'Neill and Company (Nom. Empire Trust Co.) | 17,667 |
| J. C. Orr & Co. (Nom. The New York Trust Co.) | 56,345 |
| Orr & Company (Nom. Second Bank-State Street Trust Co.) | 51,985 |
| Orrin, Henry & Co. (Nom. Irving Bank) | 38,631 |
| Helen Adams Paffard | 5,332 |
| Paine, Webber, Jackson & Curtis | 9,537 |
| Samuel Paley | 8,000 |
| Par & Co. (Nom. Worcester County Trust Company) | 5,127 |
| Parnes & Co. (Nom. Central National Bank) | 64,227 |

## GOVERNMENT TRIAL EXHIBIT No. 151—Continued

| Name | Shares |
|---|---|
| Passaic National Bank and Trust Co., Trustee under Agreement with Addie M. Ackerson dated Sept. 29, 1944 | 12,508 |
| Carl V. S. Patterson | 11,045 |
| Carolyn D. Patterson | 11,180 |
| Patterson & Company (Nom. Philadelphia Nat. Bk.) | 6,688 |
| Miss Amelia Peabody | 8,100 |
| Bernard Peyton | 124,990 |
| C. W. Phellis | 27,600 |
| Arnold E. Pitcher | 8,774 |
| Pitt & Co. (Nom. Bankers Trust Company) | 51,368 |
| Plitt & Company (Nom. First National City Bank) | 7,218 |
| Edward H. Porter and Edward H. Porter, Jr. Trustees under agreement with Amy E. du Pont dated June 16, 1949 | 60,000 |
| Marjorie M. Post | 6,000 |
| Potts & Co. (Nom. Delaware Trust Co.) | 20,968 |
| Powers & Co. (Nom. Guaranty Trust Company of New York) | 20,039 |
| John Lee Pratt | 12,000 |
| Mattie E. Pratt | 9,164 |
| Pratt & Co. (Nom. Boston Safe Deposit and Trust Co.) | 11,000 |
| Ernest W. Proctor | 10,400 |
| Esther B. Proctor | 5,108 |
| Pros & Co. (Nom. The New England Trust Co.) | 6,051 |
| [fol. 3127] | |
| Provident Mutual Life Insurance Company of Philadelphia | 12,400 |
| Provident Trust Company of Philadelphia, Trustee under agreement with Carl V. S. Patterson dated Dec. 28, 1940 | 10,360 |
| The Prudential Insurance Company of America | 12,300 |
| Quinplan & Co. (Nom. Lincoln Rochester Trust Co.) | 12,806 |
| Caroline J. Ramsay | 5,948 |
| Raymond & Co. (Nom. Wells Fargo Bank & Union Tr. Co.) | 24,624 |
| Harriet S. Bent Reese | 10,857 |
| The Regents of the University of California | 5,210 |
| Reing & Co. (Nom. Guaranty Trust Co.) | 22,758 |
| Remraf & Co. (Nom. Farmers & Merchants Nat. Bk.) | 11,744 |
| Reynolds & Co. | 6,196 |
| Alfred O. Reynolds | 10,307 |
| Alfred Owen Reynolds, Trustee under agreement with Frances Quintard Reynolds dated Dec. 24, 1952 | 5,000 |
| Edith Grace Craig Reynolds | 5,106 |
| Maxwell K. Reynolds, Jr. | 15,343 |
| Nancy du Pont Reynolds | 29,876 |
| Ridgely Realty Company | 85,000 |
| Richard E. Riegel | 7,200 |
| The Riggs National Bank of Washington, D. C., Ferdinand Lammot Belin and Peter Belin, Trustees U/W Frances J. Belin | 14,000 |
| Mary J. Riker | 11,868 |
| Samuel Riker, Jr. | 5,000 |
| Robbins and Company (Nom. The First National Bank & Trust Co. of Bridgeport) | 5,251 |
| Amy M. Robinson | 9,000 |
| Edmund G. Robinson | 29,880 |
| Mary Laughlin Robinson | 8,000 |
| Miss Pauline L. Robinson | 7,916 |
| J. Stillman Rockefeller | 5,925 |
| Rockefeller Brothers Fund, Inc. | 10,000 |
| Rockefeller Center, Inc. | 10,000 |
| The Rockefeller Institute for Medical Research | 16,000 |
| Marjorie D. Rockwell | 7,388 |
| Roll & Co. (Nom. Estate of William Rockefeller) | 18,800 |

## GOVERNMENT TRIAL EXHIBIT No. 151—Continued

| Name | Shares |
|---|---|
| Rothmayer & Co. (Nom. Bankers Trust Company) | 5,453 |
| L. F. Rothschild & Co. | 5,024 |
| Roy & Co. (Nom. First National Bank in Dallas) | 11,934 |
| Roycan & Co. (Nom. The Royal Bank of Canada) | 26,613 |
| Royork & Co. (Nom. The Royal Bank of Canada) | 5,147 |
| F. S. Royster Guano Co. | 8,000 |
| Elizabeth Bailey Rumsey | 8,500 |
| Madeleine du Pont Ruoff | 9,926 |
| Rush & Co. (Nom. Swiss American Corp.) | 29,882 |
| Edward A. Rykenboer | 10,992 |
| Safe & Co. (Nom. Safe Deposit & Trust Co.) | 45,271 |
| Sail & Co. (Nom. Second Bank-State Street Trust Co.) | 5,000 |
| St. Joe Paper Co. | 194,009 |
| St. Louis Union Trust Co. | 46,349 |
| Salkeld & Co. (Nom. Bankers Trust Company) | 111,638 |
| Sandrisser & Co. (Nom. Belgina-American Banking Corp.) | 9,325 |
| Saul & Co. (Nom. Fidelity Union Trust Co.) | 6,005 |
| Saxon & Company (Nom. Tradesmens Land Title Bank & Trust Co.) | 15,947 |
| Scheu & Co. (Nom. Guaranty Trust Co.) | 12,312 |
| Schmidt & Co. (Nom. Guaranty Trust Co. of N. Y.) | 25,153 |
| Phyllis du Pont Schutt | 30,525 |
| James H. Schwabacher | 5,108 |
| Scott & Co. (Nom. Guaranty Trust Co.) | 9,707 |
| Scranton Lackawanna Trust Company, Trustee for G. D'Andelot Belin, Jr. under agreement dated Dec. 2, 1953 | 5,000 |
| [fol. 3128] | |
| Scranton Lackawanna Trust Company, Trustee for Margaretta D'A. B. Chamberlin, under agreement dated Dec. 2, 1953 | 5,000 |
| Scranton Lackawanna Trust Company, Trustee for Margery Belin Clarke under agreement dated Dec. 2, 1953 | 5,000 |
| Security Trust Company, Lexington, Ky. | 10,152 |
| J. & W. Seligman & Co. | 35,235 |
| Sharp & Sharp | 5,764 |
| Shaw & Co. (Nom. J. P. Morgan & Co.) | 118,473 |
| Shearson, Hammill & Co. | 7,695 |
| Sheldon & Co. (Nom. The National City Bank) | 102,453 |
| Sias & Company (Nom. The National State Bank of New York) | 9,046 |
| Sigler & Co. (Nom. The Hanover Bank) | 293,871 |
| Sidna E. Smith | 12,139 |
| Smith & Sanford (Nom. Tradesmens Land Title Bank & Trust Co.) | 8,668 |
| Societe De Banque Suisse | 115,893 |
| Juanita Valerie De Laveaga Somavia | 23,396 |
| So & Co. (Nom. The New England Trust Co.) | 5,955 |
| Southwestern Life Insurance Company | 7,700 |
| May Harris Sparre | 8,420 |
| Spicer & Co. (Nom. Detroit Trust Co.) | 7,705 |
| George A. Spiva | 12,825 |
| Alice Lea Spruance | 15,688 |
| Estate of William C. Spruance, Alice Lea Spruance, Executrix | 8,276 |
| Mina C. Squier | 10,236 |
| Stackpole & Co. (Nom. New England Trust Co.) | 11,417 |
| State Bank & Trust Co., Harry B. Hanger, Jr. and W. Arnold Hanger, Trustees U/W of Harry B. Hanger | 6,948 |
| Steere & Co. (Nom. Girard Trust Corn Exchange Bank) | 188,232 |
| Claire L. Steers, Helen Steers Burgess and Newton I. Steers, Jr., Trustees Para. 7th U/W Newton I. Steers | 16,380 |
| Martha M. Stine | 9,140 |
| Layinia R. Strong | 9,224 |

GOVERNMENT TRIAL EXHIBIT No. 151—Continued

| Name | Shares |
|---|---|
| Lavinia R. Strong and Margaret S. Nourse Trs. for Lavinia R. Strong U/W John L. Riker | 18,300 |
| Stuart & Co. | 26,762 |
| Sun Life Assurance Company of Canada | 17,300 |
| Suydam & Co. (Nom. The Hanover Bank) | 7,412 |
| Swim & Co. (Nom. Second Bank-State Street Trust Co.) | 19,372 |
| Tarr & Co. (Nom. Old Colony Trust Co.) | 41,097 |
| Tegge & Co. (Nom. Guaranty Trust Co.) | 5,983 |
| Tewes & Co. (Nom. Guaranty Trust Co.) | 14,459 |
| Lucius E. Thayer | 5,218 |
| Sherman R. Thayer | 5,800 |
| Thomas & Co. (Nom. First National City Bank) | 63,982 |
| Thomas & Ward (Nom. Equitable Security Trust Co.) | 299,944 |
| Emmet C. Thompson | 11,052 |
| Thomson & McKinnon | 8,253 |
| Esther du Pont Thouron | 8,648 |
| Tico & Co. (Nom. Title Insurance & Trust Co.) | 38,314 |
| Bess Spiva Timmons | 12,000 |
| Toledo-Whelan & Co. (Nom. Bank of America International) | 5,178 |
| Touchstone & Co. (Nom. The First Pennsylvania Company) | 15,300 |
| Estate of Julia H. Trask, Benjamin H. Trask and Robert H. Trask, Executors | 22,000 |
| Trude & Co. (Nom. Continental Illinois National Bank and Trust Company of Chicago) | 6,330 |
| Trussal & Co. (Nom. National Bank of Detroit) | 18,106 |
| The Trustees of Amherst College | 5,302 |
| Trustees of the Consolidated Investment Trust under agreement dated Sept. 28, 1933 | 12,000 |
| Trustees of the Massachusetts Investors Trust under a declaration of Trust dated March 21, 1924 | 100,000 |
| [fol. 3129] | 5,525 |
| Tucker, Anthony & Co. | 15,675 |
| The Union and New Haven Trust Co. and Susan Morse Hilles, Trs. for Susan Morse Hilles, Article 5th U/W Susan A. E. Morse | 9,340 |
| Union Bank of Switzerland | 17,750 |
| Unit & Co. (Nom. The United States Natl. Bank) | 7,500 |
| United States Fidelity and Guaranty Company | 7,000 |
| United States Trust Company of New York and Bernard Peyton, Trs. for Anne Peyton Kingsford U/W A.du P. Peyton | 7,000 |
| United States Trust Company of New York & Bernard Peyton, Trs. for Bernard Peyton, Jr., U/W A. du P. Peyton | 7,000 |
| United States Trust Company of New York & Bernard Peyton, Trs. for Malcolm C. Peyton U/W A. du P. Peyton | 5,033 |
| United States Trust Company and Henry Belin Robertson, Trustees item 5 U/W Mary Belin Robertson | 13,705 |
| Urlin & Co. (Nom. Lincoln Rochester Trust Company) | 8,359 |
| Utco & Company (Nom. Union Trust Co.) | 14,958 |
| Elizabeth P. Van Pelt | 20,174 |
| Vaught & Company (Nom. Peoples First National Bank & Trust Co.) | 7,326 |
| Virg & Co. (Nom. California Bank) | 21,171 |
| Wait & Co. (Nom. Harris Trust & Savings Bank) | 6,187 |
| Lucie Andrews Walker | 16,418 |
| F. A. Wardenburg | 6,248 |
| Washington University, A Corporation | 8,833 |
| Watters & Co. (Nom. Second Bank-State Street Trust Co.) | 42,775 |
| Way & Co. (Nom. Bank of New York) | 19,559 |
| Elizabeth Bayard Weedon | 6,424 |
| William S. Weedon | |

GOVERNMENT TRIAL EXHIBIT No. 151—Continued

| Name | Shares |
|---|---|
| William E. Weiss, Jr. | 8,600 |
| Julia De L. Welch | 29,568 |
| Wellington & Co. | 23,006 |
| A. A. Welsh & Co. (Nom. The Cleveland Trust Co.) | 96,333 |
| Deo du Pont Weymouth | 20,725 |
| George T. Weymouth, C. Porter Schutt, W. S. Carpenter, 3rd & W. G. Reynolds, Trs. U/A with Eugene F. du Pont dtd. Dec. 18, 1953 | 36,000 |
| William Wheatley and Mary Wheatley Harwick, Trs. U/W Margery P. Wheatley | 6,664 |
| Howard J. White | 6,516 |
| W. A. & A. M. White | 8,910 |
| White & Co. (Nom. The Chase Manhattan Bank) | 11,732 |
| White, Weld & Co. | 10,995 |
| H. A. Whitten & Co. (Nom. Chemical Corn Exchange Bank) | 60,530 |
| George D. Widener and Schofield Andrews, Trustees U/W Joseph E. Widener | 8,000 |
| George D. Widener and Schofield Andrews Trustees U/W Peter A. B. Widener | 40,000 |
| Wiggin & Co. (Nom. Harvard Trust Co.) | 7,558 |
| Roger Williams | 6,244 |
| Williams & Co. (Nom. Bank of New York) | 88,751 |
| Wilmington General Hospital Association | 6,000 |
| The Wilmington Trust Co. | 47,656 |
| Wilmington Trust Company, Ann B. du Pont, Al Felix du Pont, Jr. and George S. Leisure, Trustees item 12 U/W A. Felix du Pont | 136,000 |
| Wilmington Trust Company, Trustee E. I. du Pont de Nemours and Company Thrift Plan | 32,700 |
| Wilmington Trust Co., Trustee for Hunter Grubb U-A dated Jan. 24, 1922 | 11,160 |
| [fol. 3130] | |
| Wilmington Trust Company, Trustee for Marian Q. Hatt U/W John E. Hatt | 8,000 |
| Wilmington Trust Company, Trustee, item 16, for Elizabeth du Pont Bayard U/W Elizabeth B. du Pont | 92,000 |
| Wilmington Trust Co., Trustee under agreement with Arthur D. Chambers dated Nov. 12, 1954 | 6,000 |
| Wilmington Trust Company Trustee under agreement with Eugene E. du Pont dated September 8, 1930 | 20,000 |
| Wilmington Trust Company, Trustee under agreement with Eugene du Pont dated August 7, 1935 for Aimee du Pont | 6,200 |
| Wilmington Trust Company, Trustee under agreement with Eugene du Pont, dated August 7, 1935 for Ethel du Pont | 6,200 |
| Wilmington Trust Company, Trustee under agreement with Henry Francis du Pont, dated January 25, 1927 | 180,000 |
| Wilmington Trust Company, Trustee under agreement with Edward C. Ferriday dated April 28, 1928 | 24,000 |
| Wilmington Trust Company, Trustee under the will of James W. Elms | 18,000 |
| Wilmington Trust Company, Trustee U/W Charles Lee Reese | 8,000 |
| Wilmington Trust Company and Alfred D. Chandler, Trustees U/W William G. Ramsay | 98,300 |
| Wilmington Trust Company and A. Felix du Pont, Trustees U/W Francis G. du Pont | 143,864 |
| Wilmington Trust Company and Eleanor W. Gibson, Trustees for Eleanor W. Gibson U/W Joseph Chester Gibson | 15,600 |
| Wilmington Trust Company & William S. Potter, Trs. for Sophie du Pont Ford U/A with Sophie du Pont Ford dtd. 7/8/43 | 65,444 |
| Winterthur Corporation | 65,000 |

GOVERNMENT TRIAL EXHIBIT No. 151—Continued

| Name | Shares |
|---|---|
| Robert Winthrop & Co. | 8,212 |
| Dean Witter & Co. | 8,443 |
| Wonham, Albert and Co. (Nom. Bank of Montreal) | 13,874 |
| Pauline E. Woolworth | 5,000 |
| Wyndham, Inc. | 35,700 |
| Yale University | 26,106 |
| Lebnard A. Yerkes | 7,380 |
| Zink & Company (Nom. Guaranty Trust Co. of N. Y.) | 17,912 |
| 599 Stockholders | 30,890,658 |

[fol. 3131] GOVERNMENT TRIAL EXHIBIT No. 153

Christiana Securities Company
Summary Schedule
Stock Ownership Study—Record Date 1/15/57
(Using Holdings Of 50 Shares Or More)

| | | No. Of Shares | % |
|---|---|---|---|
| Exhibit I | The du Pont Family (Including 49,000 shares owned by Delaware Realty and Investment Co.) | 74,623 | 49.75 |
| Exhibit II | Investment Companies, Charitable Foundations, Trusts, etc. related to the du Pont Family | 37,812 | 25.21 |
| | No. Of Shs. Closely Allied With Du Ponth | 112,435 | 74.96 |
| Exhibit III | Institutions and Charities | 2,260 | 1.50 |
| Exhibit IV | Insurance Companies, Investment Companies, etc. | 3,773 | 2.52 |
| Exhibit V | Males (Outside of du Pont family) 3,341<br>Females (Outside of du Pont family) 1,327 | 4,668 | 3.11 |
| Exhibit VI | Trustees and Nominees | 10,861 | 7.24 |
| | Total Shares Listed in Attached Exhibits | 133,997 | 89.33 |
| | Unclassified (Less than 50 shs. each) | 16,003 | 10.67 |
| | Total | 150,000 | 100.00 |

[fol. 3132] GOVERNMENT TRIAL EXHIBIT No. 170

Funds Expended for Purchase of Bonus Stock—1947–1954 Exhibit I

| Year of Award | Stock Awarded as Bonus — Number of Shares | Stock Awarded as Bonus — Cost | Total Bonus | Memo — Stock Portions as % of Total Bonus |
|---|---|---|---|---|
| | | $ | $ | % |
| 1954 | 528,742 | 39,994,076 | 74,990,453 | 53.3 |
| 1953 | 559,060 | 34,180,876 | 62,997,959 | 54.3 |
| 1952 | 528,422 | 30,447,717 | 58,958,866 | 51.6 |
| 1951 | 489,448 | 24,746,491 | 52,705,265 | 47.0 |
| 1950 | 630,001 | 28,397,804 | 67,556,601 | 42.0 |
| 1949 | 327,698 | 10,147,169 | 49,875,605 | 20.3 |
| 1948 | 283,548 | 8,407,198 | 40,973,700 | 20.5 |
| 1947 | 198,162 | 5,887,535 | 27,617,205 | 21.3 |
| Total | 3,545,081 | 182,208,866 | 435,676,654 | 41.8 |

Note: Stock data prior to 1950 have been adjusted to reflect stock split effective October 2, 1950.

[fol. 3133] GOVERNMENT TRIAL EXHIBIT No. 171

General Motors Bonus Plan

Originally Approved by the Stockholders August 27, 1918, Thereafter Modified from Time to Time, Last Approved by Stockholders May 24, 1957.

[fol. 3134] General Motors Bonus Plan

1. The purpose of this plan is to provide incentive and reward to employes who contribute to the success of the enterprise by their invention, ability, industry, loyalty or exceptional service, through making them participants in that success. The term "employes" shall mean persons employed by General Motors Corporation or any subsidiary in which the Corporation owns directly or indirectly substantially all of the common stock and shall include employes who are also directors of the Corporation or of any such subsidiary.

2(a). The Corporation shall maintain a reserve for the purposes of this plan and the General Motors Stock Option Plan, to which shall be credited for each year an amount which the independent public accountants of the Corpora-

tion determine and report to be 12% of the net earnings after deducting 5% on net capital, but not in excess of the amount paid out as dividends on the common stock of the Corporation during that year, all as hereinafter provided, except that for any year the Bonus and Salary Committee may in its discretion direct that a lesser amount be credited.

(b). Before the determination of bonus awards each year by the Committee, the independent public accountants of the Corporation shall determine and report the total amount available in the reserve. The Committee may award bonuses which, when added to the Contingent Credits then to be conditionally credited under the General Motors Stock Option Plan and the amount of the charge to the reserve pursuant to paragraph 11(b), total the amount available in the reserve as determined and reported by the independent public accountants, but the Committee shall not be obliged to award as bonus the full amount so authorized to be awarded. Bonus awards under this plan, Contingent Credits under the General Motors Stock Option Plan, amounts charageable to the reserve pursuant to paragraph 11(b) and such other amounts arising out of the operation of this plan and the General Motors Stock Option Plan as the Committee may determine shall be charged to the reserve. The reserve shall be deemed for all purposes a single, continuous reserve. Balances retained in the reserve each year shall, except to the extent otherwise directed by the Committee, be carried forward and be available in a future year or years.

(c) In the event that the amount determined and reported by the independent public accountants in any year as available for credit to the reserve should for any reason later prove to have been more than 12% of net earnings after deducting 5% on net capital, the reserve shall be debited and the appropriate account of the Corporation shall be credited by the amount of such excess, except that if the amount credited to the reserve was less than the amount determined and reported by the accountants, the amount required for adjustment shall be reduced by such difference; and if the amount in the reserve is less than the amount of such adjustment, the reserve shall be reduced immediately upon any subsequent credit to the reserve until the amount of the adjustment has been completely offset. In

[fol. 3135] the event that the amount determined and reported by the independent public accountant as available in the reserve should for any reason later prove to have been overstated, the amount then or subsequently available in the reserve shall be reduced accordingly.

Any excess credits or charges to the reserve and any overstatement of the amount available in the reserve, however occasioned, shall thus be corrected exclusively by adjustment of the reserve then or subsequently available and not by recourse to any person.

3(a). The term "net earnings" as used in this plan shall mean, for each year, the amount reported in the annual statement of income which is transferred to earned surplus as shown by the annual statement of surplus, plus the amounts of the credit for such year to the reserve for the purposes of this plan and the General Motors Stock Option Plan and interest on debt included in net capital as defined in paragraph 3(b) and less all amounts credited to income for such year pursuant to paragraph 8(b) of this plan and paragraphs 5(b) and 5(c) of the General Motors Stock Option Plan or as a result of any direction of the Bonus and Salary Committee under paragraph 2(b) of this plan that any amount of the reserve is not to be carried forward. Interest on debt shall include charges or credits arising out of premium or discount paid or received with respect to such debt.

(b). The term "net capital" as used in this plan shall mean the total of capital stock and surplus, plus debt of General Motors Corporation, as shown on the balance sheet as of the end of the year preceding the year for which the net earnings are taken, less any treasury stock (other than stock held in the special account provided for in paragraph 10(a)), plus or minus a proportionate allowance for any change during the year, based on the period of such change, in the amount of capital stock, surplus, or debt, from newly issued or finally retired capital stock (except treasury stock previously deducted) or from increase or decrease in the outstanding principal of debt.

The term "debt" as used in this plan shall mean the unpaid principal amount of all indebtedness of General Motors Corporation as principal and not as surety or guarantor, having a maturity at the time of its creation of more

than one year, independent of acceleration, and evidenced by a bond, debenture, or promissory note.

(c). The terms "balance sheet," "statement of income" and "statement of surplus" as used in this plan shall mean, for each year, those statements of General Motors Corporation and consolidated subsidiaries certified by the independent public accountants of the Corporation and contained in the Corporation's annual report to stockholders.

4. Full power and authority to construe, interpret and administer this plan shall be vested in the Bonus and Salary Committee as from time to time constituted pursuant to the By-Laws of the Corporation. Decisions of the Committee shall be final, conclusive and binding upon all parties, including the Corporation, the stockholders and the em- [fol. 3136] ployes, provided, however, that the Committee shall rely upon and be bound by the amount of net earnings, the amount of net capital, the maximum amount which may be credited to the reserve, the total amount available in the reserve, the total amount to be charged to the reserve pursuant to paragraph 11(b) and the value of stock for award purposes, all as reported by the independent public accountants.

5(a). An employe shall be eligible for consideration for bonus if at the end of the year he is receiving a salary at or above such monthly rate (which may differ with respect to employes outside the United States from the rate with respect to employes in the United States) as the Bonus and Salary Committee shall from year to year determine, but the Committee may, in its discretion, award bonuses to employes receiving salaries below the elgible monthly rate in special cases. A person whose employment terminates during the year or who is granted a leave of absence during the year, and who at the time of such termination of employment or granting of leave is receiving a salary at or above the eligible monthly rate established for that year by the Committe, may, at the discretion of the Committee and under such rules as the Committee may from time to time prescribe, be awarded a bonus with respect to the period of his services during the year. An employe whose compensation under a contract of employment is determined in whole or in part on a commission basis or by the earnings of a dealership or of a sales or service branch (whether or

not separately incorporated) shall not be eligible for bonus for the period during which his compensation is so determined, nor shall such compensation be charged against the reserve, but the Bonus and Salary Committee shall have exclusive, jurisdiction to approve, disapprove, modify or amend all plans to compensate employes, otherwise eligible for bonus, in whole or in part on a commission basis or by the earnings of a dealership or of a sales or service branch. A person who is compensated on the basis of fee or retainer, as distinguished from salary, shall not be eligible for bonus for the period during which he is so compensated.

(b). Membership on a committee of directors shall not itself render a person eligible for bonus. Membership on the Bonus and Salary Committee or on the Audit Committee shall render a person ineligible for an award of bonus.

6. The Bonus and Salary Committee shall have discretion with respect to the determination of each bonus award. Recommendations for bonus awards shall be made to the Committee by the Chairman of the Board of Directors, the President and the Chairman of the Financial Policy Committee, jointly, under such procedure as may from time to time be prescribed by the Committee except that no such recommendations shall be made with respect to employes of the Corporation or of any subsidiary who were in the year for which a bonus is awarded members of the Board of Directors or the Operations Policy Committee or the Financial Policy Committee, but such bonus shall be dealt with exclusively by the Bonus and Salary Committee under such procedure as it may determine. The aggregate amount of bonus awarded in any year to executives who are also granted stock options in such year pursuant to the General [fol. 3137] Motors Stock Option Plan shall be 75% of the aggregate amount of bonus which would have been awarded to such executives under this plan, in the opinion of the Committee, if they were not being granted such stock options under the General Motors Stock Option Plan.

Upon final determination of bonus awards by the Committee, each award of $1,000 or less (cash or stock of equivalent award value) shall be paid at the time of award. Each award of more than $1,000 shall be paid in annual instalments of 20% or $1,000, whichever is greater, the first such instalment at the time of award, and the remaining instalments in January of each succeeding year (until the full

amount of the award is paid) if earned out by the beneficiary by continuing service to the Corporation, at the rate of 1/12th of the amount of the first instalment for each complete month of service beginning with January of the year of determination, except that if it shall be determined that a beneficiary has acted or conducted himself in a manner inimical or in any way contrary to the best interests of the Corporation, such beneficiary shall lose any right to receive any portion of any instalment or amount that would otherwise have been earned out subsequent to the first of the month in which such act or conduct first occurred, provided that no instalment or amount delivered or paid prior to the date of such determination shall be required to be returned. The determination as to whether any act or conduct of a beneficiary is inimical or in any way contrary to the best interests of the Corporation shall be made by the Bonus and Salary Committee under such procedure as may from time to time be prescribed by the Committee and shall be made in the absolute discretion of the Committee. Any determination so made, including any determination of the time at which such act or conduct first occurred, shall be conclusive.

7(a), Bonus awards for any year shall be in cash or in General Motors stock or partly in cash and partly in General Motors stock, as the Bonus and Salary Committee in its discretion shall determine.

(b). With respect to bonus awards which become payable partly or wholly in cash, the amount of cash payable at the time of award shall be paid forthwith to the beneficiaries. The remaining cash shall be retained by the Corporation (without liability for interest) pending its being earned out by and paid to the beneficiaries at the times specified.

(c). With respect to bonus awards which become payable partly or wholly in General Motors stock, the shares payable at the time of award shall be delivered forthwith to the beneficiaries. The remaining stock shall be retained by the Corporation as treasury stock pending its being earned out by and delivered to the beneficiaries at the times specified. On each dividend payment date after March 31 of the year of an award of stock, the record date for which occurs after the date of the award but prior to the date of the registration of all such awarded stock in the name of the beneficiary, the Corporation shall (except as otherwise provided in

paragraph 8(b)) pay to the beneficiary, with respect to any such awarded stock not registered in his name on or prior [fol. 3138] to such record date, an amount equal to the value of the dividends which the beneficiary would have received if such stock had been registered in his name on such record date.

8(a). A beneficiary whose employment terminates by dismissal for cause or who voluntarily terminates his employment shall, unless otherwise determined in connection with the termination of his employment, lose any right to earn out his unearned bonus awards. A beneficiary whose employment terminates for any reason other than by death or as set forth in the preceding sentence shall, unless otherwise determined in connection with the termination of his employment, retain all rights to earn out unearned bonus awards.

If it shall be determined that a beneficiary who was permitted to retain his rights to earn out his unearned bonus awards upon termination of employment has, after such termination of employment, engaged, directly or indirectly, in any activity which is in competition with any activity of the Corporation or any subsidary or has, either prior to or after such termination of employment, otherwise acted or conducted himself in a manner inimical or in any way contrary to the best interests of the Corporation, such beneficiary shall, unless otherwise determined, lose any right to earn out his unearned bonus awards as of the first of the month in which such competitive activity or such act or conduct first occurred; provided that no instalment or amount delivered or paid prior to the date of any such determination shall be required to be returned.

Each determination provided for in this paragraph 8(a) shall be made by the Bonus and Salary Committee under such procedure as may from time to time be prescribed by the Committee and shall be made in the absolute discretion of the Committee. Any determination so made, including any determination of the time at which such competitive activity or such act or conduct first occurred, shall be conclusive.

(b). A beneficiary who loses his rights to earn out unearned bonus awards shall receive forthwith all earned-out portions of bonus awards and all amounts, if any, payable in accordance with the provisions of paragraph 7(c) with

respect to such earned-out stock, but not with respect to unearned stock. As to any instalment payable in stock, a fractional share shall not be delivered but shall instead be purchased by the Corporation at the closing market price of the stock on the date of termination of earning-out rights. The unearned portions of bonus awards, including unearned stock at its award value, shall be credited to income of the Corporation and any such unearned stock shall be transferred at such award value from the special treasury stock account designated for purposes of this plan and the General Motors Stock Option Plan to the account for treasury stock which is held for other corporate purposes.

9. If a beneficiary dies, his unpaid and undelivered bonus awards and dividend equivalents shall be paid and delivered to his legal representatives or to the persons entitled thereto as determined by a court of competent jurisdiction, at such times and in such manner as if the beneficiary were living.

[fol. 3139] 10(a). The Bonus and Salary Committee shall from time to time recommend to the Corporation the purchase of stock, in such amounts as the Committee may determine, for purposes of this plan and the General Motors Stock Option Plan. Stock purchased pursuant to any such recommendation shall be valued at cost and placed in a special account designated for purposes of this plan and the General Motors Stock Option Plan. The Bonus and Salary Committee may before the close of any year and before bonus awards for such year are determined recommend to the Corporation the transfer to the special account of other treasury stock held by the Corporation. Stock placed in the special account pursuant to such recommendation shall be placed therein at the average value at which all treasury common stock (other than stock held for purposes of this plan and the General Motors Stock Option Plan) is carried on the Corporation's books or at a value per share equal to the average of the daily closing market prices of General Motors common stock on the New York Stock Exchange during such year or the portion preceding such transfer, whichever value is higher.

(b). Stock shall be valued for purposes of bonus awards under this plan at the average value, determined and reported by the independent public accountants, at which all stock (other than stock held in respect of bonuses awarded under this plan or in respect of Contingent Credits condi-

tionally credited under the General Motors Stock Option Plan) is carried in the special account provided for in paragraph 10(a) on such date as may be fixed by the Bonus and Salary Committee.

11(a). Any corporation in which General Motors Corporation owns an interest but the employes of which are not eligible for bonus under this plan because General Motors Corporation does not own directly or indirectly substantially all of the common stock may without regard to the limitations of this plan have a separate bonus plan. A bonus provision under such separate bonus plan shall not be included in or considered a part of the provision under the Corporation's plan nor shall awards made under such separate bonus plan be charged against the reserve maintained for the purposes of this plan and the General Motors Stock Option Plan. The income from and investment in such other corporation shall not be excluded from net earnings or net capital as herein defined.

(b). Any corporation in which General Motors Corporation owns directly or indirectly substantially all of the common stock and which is incorporated, or does substantially all of its business, outside of the United States, may have a separate bonus plan. The Bonus and Salary Committee shall have exclusive jurisdiction on behalf of the Corporation to approve, disapprove, or suggest amendments to all such plans. In each year in which there shall be a bonus provision under such a separate bonus plan, such provision shall, prior to the determination of bonus awards for such year under this plan, be charged against the reserve maintained pursuant to paragraph 2(a) to the extent of the amount available therein; provided that, if for any reason less than all of the net income of any such corporation for [fol. 3140] the year is included in the consolidated net income of the Corporation, there shall be charged to the reserve to the extent of the amount available therein only that part of such provision which bears the same relationship to the total thereof as the amount of the net income for the year of such corporation which is included in the consolidated net income of the Corporation bears to the total net income of such corporation for the year, all as determined and reported by the independent public accountants.

12. While it is contemplated that bonuses will be awarded annually, the Bonus and Salary Committee shall have the right from time to time to modify or suspend this plan; provided, however, that no modification of the plan by the Committee without approval of the stockholders shall increase the maximum amount which may be credited to the reserve pursuant to paragraph 2(a) or charged against the reserve as hereinabove provided, or change the provisions of paragraph 6 with respect to the aggregate amount of bonus which may be awarded in any year to executives who are also granted stock options in such year, or render any member of the Bonus and Salary Committee or of the Audit Committee eligible for an award of bonus.

13. The expenses of administering this plan and the dividend equivalents which become payable hereunder shall be borne by the Corporation and not charged against the reserve.

14. In the event of a change in the Corporation's fiscal year, this plan shall apply, with pro rata adjustment in the deduction for net capital, to any intermediate period not consisting of twelve months and shall then apply to each fiscal year following.

15. Every right of action by or on behalf of the Corporation or by any stockholder against any past, present or future member of the Board of Directors, officer or employe of the Corporation arising out of or in connection with this plan shall, irrespective of the place where action may be brought and irrespective of the place of residence of any such director, officer or employe, cease and be barred by the expiration of three years from which ever is the later of (a) the date of the act or ommission in respect of which such right of action arises or (b) the first date upon which there has been made generally available to stockholders an annual report of the Corporation and a proxy statement for the annual meeting of stockholders following the issuance of such annual report, which annual report and proxy statement alone or together set forth, for the related period, the amount of the credits to the reserve for the purposes of this plan and the General Motors Stock Option Plan and the aggregate bonus awards; and any and all right of action by any employe (past, present or future) against the Corporation arising out of or in connection with this plan shall, irrespective of the place where action may be

brought, cease and be barred by the expiration of three years from the date of the act or omission in respect of which such right of action arises.

16. This plan as herely modified shall become effective as of January 1, 1957.

---

[fol. 3141] GOVERNMENT TRIAL EXHIBIT No. 172

Table A Showing

(1) Number of Shares of General Motors Common Stock Purchased by or For the General Motors Corporation for the General Motors Bonus Plan During Each of the Years 1948 Through 1957 and During the Period From January 1 Through October 27, 1958

and

(2) Number of Newly Issued Shares of General Motors Common Stock Sold by General Motors to Trustee of General Motors Savings—Stock Purchase Program During the last Three Months of 1955, all of 1956 and 1957, and the First nine Months of 1958

Number of Shares Stated in Terms of Present $1-2/3 par Value Stock**

| Year | Col. 1 Purchases of Outstanding Common Stock for Bonus Plan | Col. 2 Newly Issued Common Stock for Savings-Stock Plan | Col. 3 Total of Columns 1 and 2 |
|---|---|---|---|
| 1949 | 1,001,136 [1] | * | 1,001,136 |
| 1950 | 1,911,600 [2] | x | 1,911,600 |
| 1951 | 1,429,200 [3] | x | 1,429,200 |
| 1952 | 1,647,000 [4] | x | 1,647,000 |
| 1953 | 1,623,900 [5] | x | 1,623,900 |
| 1954 | 1,566,600 [6] | x | 1,566,600 |
| 1955 | 1,255,500 [7] | 150,750* [11] | 1,406,250 |
| 1956 | 1,024,213 [8] | 986,873* | 2,011,086 |
| 1957 | 1,024,711 [9] | 1,167,973* | 2,192,684 |
| 1/1/58—10/27/58 | 457,261 [10] | 1,011,358* [12] | 1,468,619 |
| Total | 12,941,121 | 3,316,954 | 16,258,075 |

[1] Source, Russell #1
[2] Source, Russell #3
[3] Source, Russell #5
[4] Source, Russell #7
[5] Source, Russell #9
[6] Source, Russell #11
[7] Source, Russell #13
[8] Source, Russell #15
[9] Source, Russell #17
[10] Source, Russell #19

So identified at deposition of George Russell taken on 1/8/59

[11] October 1, 1955 through December 31, 1955
[12] January 1, 1958 through September 30, 1958

* Source, General Motors Answer of December 12, 1958 to Government's Interrogatory #4.
** Reflects 2 for 1 stock split in 1950 and 3 for 1 stock split in 1955.

[fol. 3142] GOVERNMENT TRIAL EXHIBIT No. 173

General Motors Corporation

Notice and Proxy Statement

[fol. 3143] Proposal Number 2

Incentive Program and Related Amendments to By-Laws

This proposal presents for the consideration of the stockholders, with the recommendation that they approve, an incentive program, consisting of the modified General Motors Bonus Plan and the General Motors Stock Option Plan, and amendments to Articles 27, 39 and 40 of the By-Laws of the Corporation, such amendments being related to the incentive program.

Review by Special Committee

The By-Laws of the Corporation provide that the Bonus Plan be presented by the directors for action at a stockholders' meeting at least once in every five years. The Bonus Plan was last submitted to stockholders at the annual meeting held May 23, 1952 when certain changes, relating primarily to the administration and clarification of the Plan, were approved effective January 1, 1952. In anticipation of the submission of the Bonus Plan to stockholders at the 1957 annual meeting, the Board of Directors, in July 1956, appointed a Special Committee consisting of six members of the Board, none of whom will be eligible under the proposed program, to review the Bonus Plan in the light of its objectives and make recommendations with respect thereto. The members of the Committee are Messrs. Albert Bradley, Charman, Henry C. Alexander, Lammot du P. Copeland, Henry B. du Pont, Earle F. Johnson and Alfred P. Sloan, Jr.

Following its review, the Committee concluded that the basic theory and objectives of the Bonus Plan are sound. It concluded also that the Plan has been and still is of important benefit to the Corporation and the stockholders as an incentive for eligible employes who contribute to the success of the enterprise. Accordingly, the Committee recommended that, with certain modifications hereafter described, the General Motors Bonus Plan be continued.

The study by the Committee led to a further recommendation that a stock option plan be adopted. The Committee recognized that one reason for the adoption of the Bonus Plan and its continuance through the years was the belief that substantial stock ownership by its management is an important factor in the success of any enterprise. The relatively large stockholdings in General Motors Corporation on the part of its executives have played an important role in bringing the Corporation to its position of industrial leadership. However, high personal income taxes have, for some time, reduced the portion of bonus awards that the principal executives have been able to retain as an investment in General Motors Corporation stock. The Special Committee believes that the Stock Option Plan being submitted for approval will provide an opportunity for increased stockholdings on the part of the participants and, together with the Bonus Plan, will furnish even more effective incentive to management than the present Bonus Plan by itself.

The Committee decided, however, that it would not be desirable to add a stock option plan to the Corporation's present incentive compensation structure without an adjustment in the case of executives exercising options. Therefore, the Stock Option Plan provides that such executives will not receive certain payments of supplemental compensation which they might otherwise receive, as described under "Contingent Credits" appearing on page 22.

The modified Bonus Plan and the Stock Option Plan were unanimously approved by the Special Committee and the Bonus Salary Committee. Subject to the approval of the stockholders, the Board of Directors adopted this incentive program and the related amendments to the By-Laws of the Corporation by unanimous vote of the 17 directors present at the meeting who will not be eligible under the program.

If the proposed incentive program is approved by the holders of a majority of the common stock present or represented at the annual meeting the program will become effective as of January 1, 1957. If the incentive program [fol. 3144] is not so approved, the Bonus Plan, with such modifications as may be approved by the Bonus and Salary Committee, will be submitted to the stockholders for ap-

proval at a special meeting to be called for that purpose prior to the end of the year.

In connection with its review of the Bonus Plan the Special Committee also considered the unawarded balance in the bonus reserve which, after determination of 1956 bonus awards, amounted to $19,801,413. The Special Committee recommended, and the Bonus and Salary Committee has directed, that this unawarded balance be restored to the income of the Corporation in 1957. This credit to income will not, under the modified Bonus Plan, be included in net earnings for purposes of calculating the maximum provision under the Plan for the year 1957.

## Modified Bonus Plan

The fundamental provisions of the Bonus Plan have been retained. However, modifications have been made to permit the concurrent operation of the Bonus Plan and the Stock Option Plan and to provide for certain other changes. The complete text of the modified Bonus Plan is set forth in Exhibit A of this Proxy Statement.

Bonus Plan Formula. The modified Bonus Plan retains the formula which was approved by the stock holders in 1947 and 1952 under which the maximum credit to the reserve for any year is 12% of net earnings in excess of 5% of net capital, but not in excess of dividends on the common stock for the year. It is estimated that for 1957 net earnings for purposes of the modified Bonus Plan will have to be in excess of approximately $245,000,000, which would be equivalent to 80c per share of common stock, before any credit may be made to the reserve. The Plan also continues to provide that the Bonus and Salary Committee may direct that for any year an amount less than the maximum amount available under the formula shall be credited to the reserve. As in the past, the Bonus and Salary Committee may, but is not obliged to, award as bonus in any year the full amount available in the reserve for such awards. Balance retained in the reserve each year unless otherwise directed by the Committee will continue to be carried forward and will be available in a future year or years.

In its review of the Bonus Plan, the Special Committee took into account that the Bonus and Salary Committee,

in the exercise of the discretion granted to it under the Bonus Plan, had, (a) credited to the bonus reserve over the ten year period 1947 through 1956 approximately $92,600,000 less than the maximum amount which could have been credited, and (b) awarded as bonus over this period approximately $19,800,000 less than the amount credited to the reserve:

| Year | Maximum Amount Which Could Have Been Credited to the Bonus Reserve | Amount Credited to the Bonus Reserve | Amount Awarded |
|---|---|---|---|
| | $ | $ | $ |
| 1947 | 29,112,000 | 29,112,000 | 27,617,000 |
| 1948 | 48,928,000 | 48,928,000 | 40,974,000 |
| 1949 | 75,192,000 | 60,000,000 | 49,876,000 |
| 1950 | 95,643,000 | 67,600,000 | 67,557,000 |
| 1951 | 52,750,000 | 52,750,000 | 52,705,000 |
| 1952 | 59,034,000 | 59,034,000 | 58,959,000 |
| 1953 | 63,072,000 | 63,072,000 | 62,998,000 |
| 1954 | 87,361,000 | 75,000,000 | 74,990,000 |
| 1955 | 131,989,000 | 95,000,000 | 94,981,000 |
| 1956 | 85,905,000 | 85,905,000 | 85,895,000 |

[fol. 3145] In reaching its conclusion that the formula for determining the maximum annual credit to the reserve under the Bonus Plan should be retained, the Special Committee recognized that the formula must be designed to operate over a period of time and must contemplate years of varying levels of business activity and resulting profits. In its report to the Board of Directors, the Special Committee stated that in its opinion the fact that total awards in the past have been less than the maximum amount which could have been awarded under the Plan does not mean that it will not be desirable to award the full amount under such circumstances as the Corporation may face in the future. The Committee further concluded that the discretionary power of the Bonus and Salary Committee to credit and award less than the maximum available under the formula had proved highly effective in the past, and could be relied upon in the future, as a means of limiting total bonus awards if desirable to do so.

While the modified Bonus Plan continues the formula for determining the maximum credit to the reserve under the Bonus Plan, certain changes have been made in the definitions of "net earnings" and "net capital." Since 1947 net earnings for purposes of the formula has been defined as the amount reported in the annual statement of

income which is transferred to earned surplus for the year plus the provision for bonus and interest on debt included in net capital. Under this definition, the entire net income of the Corporation, from whatever source, has been included in determining such net earnings. Under the modified Bonus Plan there will be excluded from net earnings for purposes of the formula the credits to income of the Corporation specified in Paragraph 3(a) of the Plan. In determining net capital for purposes of the formula, the capital stock and surplus of General Motors Corporation has been reduced in the past by the amount of stock which had been awarded as bonus but was being held by the Corporation at the beginning of the year for future delivery. Under the modified Bonus Plan, none of the stock held in the special treasury stock account designated for purposes of the Bonus Plan and the Stock Option Plan will be deducted in determining net capital. The maximum credit to the reserve calculated in accordance with these modified definitions of net earnings and net capital will be less than if the previous definitions had been continued.

"Net capital" will continue to include debt of General Motors Corporation, and, accordingly, net earnings for purposes of the formula are taken before deduction for interest on such debt. It is recognized that payment of interest on debt results in a decrease in income taxes. However, in determining net earnings, the Plan has not required recognition of the effect which interest charges on debt have upon the amount of income taxes payable. The modified Bonus Plan makes no change in this procedure. As in the past, debt included in net capital will be that of General Motors Corporation only, and net capital therefore will not include indebtedness of any subsidiary, whether consolidated or not. While the earnings of all consolidated and wholly-owned non-consolidated subsidiaries are now included in net earnings, the earnings of such subsidiaries are determined after deducting interest charges on their debt.

Eligibility. The modified Bonus Plan continues to provide that the Bonus and Salary Committee shall determine all awards under the Plan and that an employe shall be eligible for consideration for bonus if at the end of the year he is receiving a salary at or above such monthly

rate as the Committee shall determine. It likewise continues to permit bonus awards in special cases to employes receiving salaries below the eligible monthly rate. For the year 1956 the minimum eligible salary rate for employes in the United States was $640 a month. The minimum rates for employes in Canada and certain other foreign countries were somewhat lower.

The modified Bonus Plan also continues to provide, as it has since 1943, that an employe whose compensation under a contract of employment is determined in whole or in part on a commission basis or by the earnings of a dealership or of a sales or service branch shall not be eligible for bonus and that any such compensation shall not be charged against the reserve under the General Motors Bonus Plan.

Instalment Basis of Bonus Delivery. The modified Bonus Plan continues to provide that a bonus award of less than $5,000 shall be delivered in annual instalments of $1,000 [fol. 3146] until paid and that an award of $5,000 more shall be delivered in five equal annual

time of the award, to delivery of only the initial

instalments as described in the Plan.

The provisions for instalment delivery have the important advantage to the Corporation of furnishing added incentive to valuable executives to remain in the employ of the Corporation. In addition, instalment delivery makes the Bonus Plan more effective as an incentive since deliveries over a period of years tend to reduce fluctuations in the recipient's income. On the other hand, this basis of delivery defers to later years the availability to the Corporation of part of the allowable deduction for tax purposes. If corporation income tax rates decline, this tends to increase the income taxes payable by the Corporation. However, if corporation income tax rates increase, the deferment of part of the tax deduction for bonus tends to decrease the income taxes payable by the Corporation.

Form of Award. The modified Bonus Plan continues to provide that bonus awards shall be in cash or in General Motors stock or partly in cash and partly in General Motors stock, as the Bonus and Salary Committee in its discretion determines. Since 1950 a specified percentage of all

five instalments of bonus has been awarded in stock, with the percentage in stock being reduced as the size of individual bonuses increased. The general objective has been to award in cash such portion of the total bonus as will enable the recipient to pay the tax on his total bonus and retain the stock portion of his bonus. For 1956, approximately 54% of the total value of awards will be payable in stock. Awards to certain employes outside the United States, however, have been made entirely in cash.

Dividend Equivalents. The modified Bonus Plan continues to provide that stock which is not delivered at the time of its award is to be retained by the Corporation as treasury stock pending its being earned out by and delivered to the beneficiaries. The Plan further provides that on dividend payment dates after March 31 of the year of an award the Corporation will pay amounts equal to the value of the dividends that would have been payable on such retained stock if it had already been earned out and delivered. The dividend equivalents are not charged to the reserve but are included in the expenses of the Corporation.

Awards to Certain Employes in Foreign Service. A special situation is presented in the case of employees who have Home Office Status but are in foreign service. With few exceptions, these employes are sent out from the United States. In the case of approximately 100 of the Home Office Status employes, the foreign taxes applicable to their bonus awards exceed, in some cases by substantial amounts, the taxes which are incurred by comparable employes in the United States. As a means of maintaining equities between employes, Home Office Status personnel in foreign service are reimbursed for the excess of their local taxes, with respect to bonus awards as well as salaries, over the amount they would have paid if employed in the United States. As explained in the Proxy Statement for the annual meeting of stockholders in 1952, such tax reimbursement is charged to expense. It is estimated that in the year 1957 the tax reimbursement with respect to bonus awards will approximate $120,000.

Separate Bonus Plans of Overseas Subsidiaries. Since 1943 the Bonus Plan has provided that any corporation in which General Motors Corporation owns an interest and

which is incorporated outside the United States or does substantially all of its business outside the United States may have a separate bonus plan without regard to the limitations of the General Motors Bonus Plan. The bonus Plan has further specified that the bonus provisions under such separate bonus plans are not to be included in or considered a part of the provision for bonus under the General Motors Bonus Plan and that awards made under such separate bonus plans are not to be charged against the reserve under the General Motors Bonus Plan.

At present, separate bonus plans are in effect at the five overseas manufacturing subsidiaries of the Corporation for employes after than Home Office Status personnel. Two of these subsidiaries are in England and the other three are in Australia, France and Germany. Under each of these plans the maximum annual bonus provision is [fol. 3147] determined as a specified percentage of net earnings of the subsidiary in excess of a percentage of net capital. Awards under these plans are payable in local currency in up to five annual instalments subject to being earned out, except that two of these separate plans contain provisions under which payment of a portion of specified bonus awards may be deferred until retirement.

The Special Committee considered the relationship between these separate bonus plans for overseas subsidiaries and the General Motors Bonus Plan. It concluded that the original reason for the establishment of these separate plans—namely the desirability, for operating reasons, of furnishing direct incentive to the local personnel based on the overseas manufacturing subsidiaries' earnings—continues to exist today.

Since 1943, however, the relative importance of these separate bonus plans and the amounts of bonus provided thereunder have increased. In recent years the amounts awarded under such separate plans have, in the aggregate, averaged about $2,000,000 annually. The amounts of bonus which may be provided thereunder may increase in the future in view of the expansion programs in which these overseas manufacturing subsidiaries are engaged and also as a result of modifications in the formulas under these separate plans which have been approved by the Bonus and Salary Committee effective with the year 1957.

In view of these circumstances and recognizing that the earnings of all five of these subsidiaries are included in net income of General Motors Corporation, the Special Committee recommended, and the modified Bonus Plan provides, that in each year in which there is a bonus provision under one or more of the separate plans, such provisions will, prior to the determination of bonus awards for that year under the General Motors Bonus Plan, be charged to the reserve under the General Motors Bonus Plan, except under the special circumstances described below. If this modification had been in effect for the year 1956, the amount available for award under the General Motors Bonus Plan would have been reduced by approximately $1,650,000.

It is recognized that under certain circumstances, the bonus provided under these separate bonus plans might, in a given year, exceed the amount in the reserve under the General Motors Bonus Plan. It is believed, however, that the basic purpose of the separate plans would not be accomplished if the bonus provisions under such plans were, under such circumstances, limited to the amount in the reserve under the General Motors Bonus Plan. Consequently, the modified Bonus Plan provides that the bonus provisions under the separate plans shall be charged to such reserve to the extent of the amount available therein, with any excess being charged to the net income of the Corporation. On the other hand, regardless of the amount that may be available in the reserve under the General Motors Bonus Plan, there will be no bonus provision under any of these separate plans unless the earnings of the subsidiary are in excess of the return on capital required in that subsidiary's plan.

The modified Bonus Plan also provides for an appropriate reduction in the amount of the charge to the reserve under the General Motors Bonus Plan if in some future year, because of exchange restrictions or for other reasons, some or all of the income of one or more of these overseas manufacturing subsidiaries is not included in net income of the Corporation.

Provisions Relating to Rights to Earn Out Bonus Upon Termination of Employment. The concept of the Bonus Plan as to loss of rights to earn out bonus remains basically

the same as heretofore although there have been changes in certain provisions. In general, bonus beneficiaries who are dismissed for cause or quit will lose their rights to earn out bonus and bonus beneficiaries whose employment is terminated under any other circumstances will retain their rights to earn out bonus. A bonus beneficiary who retains his rights to earn out bonus upon termination of his employment will subsequently lose such rights if it is later determined that, after termination of employment, he has engaged in certain competitive activities or that, either prior to or after termination of employment, he acted or conducted himself in a manner inimical or in any way contrary to the best interests of the Corporation. When a beneficiary loses his rights to earn out bonus, such loss is to [fol. 3148] be retroactive to the date of the act or occurrence causing the loss of rights, even though prior to the termination of employment, provided that any instalment of bonus which has been delivered prior to the determination of the loss of rights is not required to be returned. All determinations with respect to the retention or loss of rights to earn out bonus are to be made by the Bonus and Salary Committee.

Accounting for Unearned Bonus Stock. In the past, when a bonus beneficiary lost his rights to earn out bonus, the stock portion of such unearned bonus was retained in the special treasury stock account designated for bonus purposes at the original award value. The modified Bonus Plan provides that when such loss of rights occurs such stock shall be transferred at its award value to the account for treasury stock held for other corporate purposes. If, subsequently, this stock is made available for bonus awards, it will be valued at the higher of (a) the average value at which all treasury common stock (other than stock held for purposes of the Bonus Plan and Stock Option Plan) is carried on the Corporation's books or (b) the average daily closing market price of General Motors common stock during the year up to the date it is made available. Any resulting increase in the carrying value of such stock will be credited to capital surplus.

Three Year Limitation Period for Actions. The provisions of the modified Bonus Plan, which prescribe the period after which actions arising out of or in connection

with the Bonus Plan shall cease and be barred, embody the changes necessary to conform to the proposed amendment to the Certificate of Incorporation as set forth in Proposal Number 3.

Other Changes. The modified Bonus Plan has been amended to provide that the reserve under the Bonus Plan will be available for the purposes of both the Bonus Plan and the Stock Option Plan. The Plan has been further amended to provide for the purchase of stock for the purposes of Contingent Credits under the Stock Option Plan as well as bonus awards under the Bonus Plan. A change has also been made in the procedure for recommending bonus awards.

Modification or Suspension. The modified Bonus Plan provided that the Bonus and Salary Committee shall have the right from time to time to modify or suspend the Plan; provided, however, that no modification of the Plan without approval of the stockholders may increase the maximum amount which may be credited to or charged against the reserve under the Bonus Plan or change the provisions of the Plan relating to the aggregate amount of bonus which may be awarded to executives granted stock options or render any member of the Bonus and Salary Committee or of the Audit Committee eligible for an award of bonus.

Tax Status

The Corporation has filed a request with the Commissioner of Internal Revenue for a ruling that the proposed amendments to the Bonus Plan will not in and of themselves adversely affect in any way the conclusions expressed in the ruling letters issued in 1947 and 1952 by the Internal Revenue Service with respect to the Bonus Plan.

It is the opinion of counsel for the Corporation that, as provided under the 1947 and 1952 ruling letters, the first instalment of a bonus award will continue to be deductible by the Corporation for tax purposes in the year in which such instalment is paid or made available to the recipient and the subsequent instalments of bonus awards will be deductible by the Corporation in the year in which each such instalment is earned out. Dividend equivalents will be deductible by the Corporation for tax purposes in the year paid.

The status of certain executives employed by the Cor-

poration in the foreign operations of the Corporation presents special tax problems. In some instances tax deductions for bonuses paid to such executives may not be available to the Corporation. However, loss of tax deductions in such cases, or tax results or treatment which may be partly in conflict with the tax opinion expressed above, can be accepted, in the opinion of the Board of Directors, on the basis of sound business judgment.

[fol. 3149] Stock Option Plan

The complete text of the Stock Option Plan is set forth in Exhibit B of this Proxy Statement. The principal features of the Plan are summarized and commented upon below.

Duration of Plan—Maximum Number of Shares. Options to purchase common stock of the Corporation may be granted to executives in each of the five years 1958 to 1962, inclusive. The aggregate number of shares of $1⅔ par value common stock of the Corporation for which options may be granted will not exceed 4,000,000 shares, or 1.4% of the 277,776,713 shares outstanding on April 12, 1957, and the aggregate number of shares for which options may be granted to any one executive will not exceed 75,000 shares, or 1.9% of the total number of shares for which options may be granted. These limitations on the number of shares for which options may be granted in the aggregate and to any one executive are to be appropriately adjusted as summarized below in the event of certain changes in the number or class of the outstanding shares of common stock of the Corporation. If an option terminates for any reason without having been exercised in full, options may be granted to other executives with respect to the unpurchased shares.

Selection of Participants. The executives to whom options will be granted will be selected by the Bonus and Salary Committee pursuant to recommendations made jointly by the Chairman of the Board of Directors, the President and the Chairman of the Financial Policy Committee, except that the selection of executives who are members of the Board of Directors or the Operations Policy Committee or the Financial Policy Committee will be dealt with exclusively by the Bonus and Salary Committee. The term "executives" means executives (including executives

who are directors) employed by General Motors Corporation or any subsidiary in which the Corporation owns directly or indirectly substantially all of the common stock.

The Bonus and Salary Committee has not selected any executive to participate in the Stock Option Plan since no options can be granted until 1958. Therefore it is not possible to name any person or to state the number of persons who will participate in the Plan, or to state the number of shares for which options will be granted to any person or group of persons. However, the Special Committee contemplated that the number of executives who might be selected in 1958 to participate in the Plan would be in the area of 250.

Terms of Options. The executives selected each year will be granted options at the time of, or as soon as practicable after, the determination of bonus awards in that year. The option price will be 100% of the fair market value of the stock at the time the option is granted. The number of shares to be subject to each option will be determined as described below under "Contingent Credits."

An executive may not exercise any part of an option until he has completed 18 months of employment following the date it was granted. Thereafter he may exercise all or any part of the option at any time prior to its expiration. If an executive is dismissed for cause or quits without prior written consent, his option will expire upon the termination of his employment. In all other cases of termination of employment, other than by reason of death, the executive will, unless otherwise determined, retain for three months the right to exercise any options which he had been granted 18 or more months prior to such termination of employment. Upon the death of an executive, either before or within three months following termination of employment, any options which were exercisable at the date of death may be exercised during the following twelve months. Each option will in any event expire no later than 10 years after the date is granted. Options will not be transferable except by will or the laws of descent and distribution.

All shares purchased upon the exercise of an option are to be paid for in full at the time of purchase. Prior to such purchase no holder of any option will have any rights to dividends or other rights of a stockholder with respect to

shares subject to the option. The amounts received by the Corporation upon the exercise of options will constitute general funds of the Corporation and may be used by it for any corporate purpose.

[fol. 3150] Contingent Credits. Under the modified Bonus Plan, the aggregate amount of bonus awarded in any year to executives who are granted stock options in that year will be 75% of the aggregate amount of bonus which, in the opinion of the Bonus and Salary Committee, would have been awarded to such executives if they were not being granted stock options. At the time such awards are made each year, there will, in addition, be conditionally credited under the Stock Option Plan to executives granted stock options in that year amounts, called Contingent Credits, equal to one-third of the reduced amount of bonus actually awarded to such executives. Thus the bonus awards plus the Contingent Credits of such executives will be equivalent to the amount that would have been awarded as bonus to such executives if they had not received stock options. The modified Bonus Plan provides that Contingent Credits under the Stock Option Plan, as well as bonus awards under the Bonus Plan, are to be charged against the reserve under the Bonus Plan.

Contingent Credits are to be in General Motors common stock, the number of shares to be determined by dividing the amount of the Contingent Credit by the award value per share of stock awarded as bonus in the year the Contingent Credit is established. Each option will be for three times the number of shares of common stock in the Contingent Credit established for the executive at the time the option is granted. Upon the exercise of an option, in whole or in part, the related Contingent Credit will be reduced proportionately, the amount of such reduction, which will be credited to income, being determined by multiplying (a) the award value of stock awarded as bonus in the year in which the Contingent Credit was established by (b) one-third of the number of shares of stock purchased upon such exercise. Therefore, if an option is exercised in full, the entire related Contingent Credit will be credited to income.

Payment of Dividend Equivalents on Contingent Credits. On dividend payment dates after March 31 of the year in

which any Contingent Credit is established, the Corporation will pay, with respect to any shares remaining in the Contingent Credit, amounts equal to the value of the dividends that would have been payable on such shares if they had already been delivered. The dividend equivalents will not be charged to the reserve under the Bonus Plan but will be included in the expenses of the Corporation.

Delivery of Shares in Contingent Credits. Upon the termination of an option, the shares of stock corresponding to any balance of the related Contingent Credit will be delivered to the executive in five equal annual instalments, except that (a) an executive who is dismissed for cause or quits without prior written consent will not receive any undelivered instalments and (b) an executive whose employment terminates for any reason other than death or as set forth in (a) above will not receive any undelivered instalments if it is so determined in connection with the termination of his employment. Further, if an executive who may receive instalments following termination of employment is later determined to have failed to render from time to time such service as may reasonably be requested, or to have engaged in certain competitive activities, or to have acted or conducted himself, either prior to or after termination of employment, in a manner inimical or in any way contrary to the best interests of the Corporation, such executive will not receive any instalments which have not already been delivered to him. Upon the death of an executive after termination of an option or upon the termination of an option after the death of an executive, the shares in his Contingent Credits that would be delivered to him if he were living will be delivered to the persons entitled thereto at such times as they would if the executive were living.

Accounting for Reductions in Contingent Credits. The amount of any reduction in a Contingent Credit resulting from the exercise of an option will be credited to the income of the Corporation. If an option expires and if at that time or subsequently it is determined that an executive shall not receive the related Contingent Credit, an amount equal to such Contingent Credit will likewise be credited to income. The amounts so credited to income will not be included in net earnings for the purpose of determining the maximum credit to the reserve under the Bonus Plan. The accounting for the stock corresponding to the amount of a Contingent

Credit or part thereof which will not be delivered will be the same as the accounting for the stock portion of unearned bonus awards when bonus beneficiaries lose their rights to earn out bonus, as described under "Accounting for Unearned Bonus Stock" appearing on page 20.

[fol. 3151] Shares to be Used for Stock Option Plan. The shares to be delivered upon exercise of the options will, at the discretion of the Board of Directors, be authorized but unissued shares or shares reacquired by the Corporation, including shares purchased in the open market. It is contemplated that authorized but unissued shares will be delivered upon the exercise of options. The use of authorized but unissued shares for such purpose is permitted by Article Fourth of the Certificate of Incorporation, as amended in September 1955, within the limitation therein set forth.

The shares of common stock used for Contingent Credits will be shares reacquired by the Corporation, including shares purchased in the open market.

In the event that outstanding shares of General Motors common stock shall be changed in number or class by reason of split-ups, combinations, mergers, consolidations, or recapitalizations, or by reason of stock dividends, the number and class of shares for which options may thereafter be granted, both in the aggregate and as to any individual, and the number and class of shares then subject to options theretofore granted and the price per share payable upon exercise of such options, and the amount of reduction in any Contingent Credit resulting from the exercise of an option, shall be adjusted so as to reflect such change, all as determined by the Bonus and Salary Committee.

Administration of the Stock Option Plan. Full power and authority to construe, interpret and administer the Plan is vested in the Bonus and Salary Committee as from time to time constituted pursuant to the By-Laws of the Corporation. Decisions of the Committee will be final, conclusive and binding upon all parties, including the Corporation, the stockholders and executives. Membership on the Bonus and Salary Committee or on the Audit Committee will render a person ineligible to be granted an option or a Contingent Credit.

The expenses of administering the Plan will be borne by the Corporation and will not be charged against the reserve under the Bonus Plan.

Three Year Limitation Period for Actions. Any right of action by or on behalf of the Corporation or by any stockholder against any past, present or future director, officer or employe arising out of the Plan will cease and be barred by the expiration of three years from whichever is the later of (a) the date of the act or omission in respect of which such right of action arises, or (b) the date when certain specified information relating to the operation of the Plan is made generally available to stockholders. Any such right of action by an executive against the Corporation arising out of the Plan will cease and be barred by the expiration of three years from the date of the act or omission in respect of which such right of action arises. These provisions conform to the proposed amendment to the Certificate of Incorporation as set forth in Proposal Number 3.

Termination, Modification or Suspension. The Bonus and Salary Committee may terminate, modify or suspend the Plan at any time, provided that no such modification without the approval of the stockholders may (a) increase the number of shares for which options may be granted under the Plan to more than 4,000,000 shares in the aggregate or 75,000 shares to any one executive (except as provided in the Plan in the event of changes in the number or class of outstanding shares); or (b) permit the granting of options at a price of less than 100% of fair market value of the Corporation's common stock at the time the options are granted; or (c) permit the exercise of options unless full payment is then made; or (d) change the provisions of the Plan with respect to the determination of the number of shares for which an option may be granted and the amount of a Contingent Credit established for an executive; or (e) change the provisions of the Plan with respect to the determination of the amount of reduction in a Contingent Credit resulting from the exercise of an option (except as provided in the Plan in the event of changes in the number or class of outstanding shares); or (f) extend the period during which options may be exercised; or (g) render any member of the Bonus and Salary Committee or the Audit Committee eligible to be granted an option or a Contingent Credit.

[fol. 3152] Registration and Listing of Stock

The Corporation has been advised by counsel that it will be necessary to register under the Securities Act of 1933 shares to be delivered upon the exercise of options granted under the Plan. It will also be necessary to list authorized but unissued shares to be delivered upon the exercise of options on the New York and several other securities exchanges.

Tax Status

The Corporation has received a ruling from the Internal Revenue Service that the stock options granted under the proposed Plan will qualify as "restricted stock options" under the provisions of Section 421 of the Internal Revenue Code. If stock acquired by an executive on the exercise of such an option is retained at least six months after the date of exercise of the option and to a date not earlier than two years after the date of the grant of the option, any profit realized on the subsequent sale of such stock will be treated as a long-term capital gain for Federal income tax purposes. In such cases, the Corporation will not be entitled to any deductions for Federal income tax purposes in connection with the grant of options under the Plan or the issuance of stock pursuant to the exercise of such options.

In the opinion of counsel for the Corporation, the fair market value of the stock corresponding to the Contingent Credits payable to executives after the termination of options will be deductible by the Corporation, and will constitute taxable income to the recipients, in the year or years paid.

Amendments to By-Laws

There are presented below the amendments to Articles 27, 39 and 40 of the By-Laws of the Corporation. These amendments were adopted by the Board of Directors subject to the approval of the stockholders and relate to the proposed incentive program. Except as otherwise stated, the purpose of each of the amendments is to provide in each amended Article for a stock option plan as well as a bonus plan.

Article 27 of the By-Laws

It is proposed that the stockholders approve the amendment by the Board of Directors of Article 27 of the By-Laws to read as follows:

"27. Bonus Plan and Stock Option Plan. The board of directors shall have power to adopt and to repeal, from time to time, a bonus plan and a stock option plan for employes of the corporation or any subsidiary, including employes who are also directors of the corporation or any such subsidiary. Power to construe, interpret, administer, modify or suspend any such bonus plan and any such stock option plan shall be vested in the bonus and salary committee of the board of directors. Any such bonus plan and any such stock option plan shall be presented by the directors for action with respect thereto at a stockholders' meeting at least once in every five years."

Prior to this amendment, Article 27 read as follows:

"27. Bonus Plan. The board of directors shall have power to adopt and to repeal, from time to time, a bonus plan for employes of the corporation or any subsidiary, including employes who are also directors of the corporation or any such subsidiary. Power to construe, interpret, administer, modify or suspend such plan shall be vested in the bonus and salary committee of the board of directors, the members of which committee shall be ineligible for bonus. Any such bonus plan shall be presented by the directors for action with respect thereto at a stockholders' meeting at least once in every five years."

It will be noted that Article 27 as amended omits the former provision that members of the Bonus and Salary Committee shall be ineligible for bonus. Such a provision is included in Article 40 of the By-Laws as amended and set forth below.

[fol. 3153] GOVERNMENT TRIAL EXHIBIT No. 176

Table B Showing

Number of Shares of General Motors Common Stock Awarded to General Motors Personnel Under the General Motors Bonus Plan During Each of the Years 1948 Through 1957

| Year | Bonus Awards for Each Year |
|---|---|
| 1949 | 983,154[1] |
| 1950 | 1,890,348[2] |
| 1951 | 1,468,344[3] |
| 1952 | 1,586,124[4] |
| 1953 | 1,677,180[5] |
| 1954 | 1,586,226[6] |
| 1955 | 1,267,805[7] |
| 1956 | 1,026,228[8] |
| 1957 | 1,027,301[9] |
| | 12,512,710 |

[1] Source, Document #2 identified at deposition of George Russell taken on January 8, 1959

[2] Source, Document #4 identified at deposition of George Russel taken on January 8, 1959

[3] Source, Document #6 identified at deposition of George Russell taken on January 8, 1959

[4] Source, Document #8 identified at deposition of George Russell taken on January 8, 1959

[5] Source, Document #10 identified at deposition of George Russell taken on January 8, 1959

[6] Source, Document #12 identified at deposition of George Russell taken on January 8, 1959

[7] Source, Documents #13 and 14 identified at deposition of George Russell taken on January 8, 1959

[8] Source, Documents #15 and #16 identified at deposition of George Russell taken on January 8, 1959

[9] Source, Documents #17 and #18 identified at deposition of George Russell taken on January 8, 1959

[fol. 3154] GOVERNMENT TRIAL EXHIBIT No. 179

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 49C 1071

UNITED STATES OF AMERICA, Plaintiff,

v.

E. I. DU PONT DE NEMOURS AND COMPANY, GENERAL MOTORS CORPORATION, CHRISTIANA SECURITIES COMPANY AND DELAWARE REALTY AND INVESTMENT CORPORATION, Defendants

Answers to Interrogatories Propounded to E. I. Du Pont De Nemours and Company

E. I. du Pont de Nemours and Company answers the interrogatories propounded to it as follows (answers are numbered according to the numbers of the interrogatories):

1. The total dollar sales of E. I. du Pont de Nemours and Company to General Motors Corporation, exclusive of sales by certain du Pont subsidiaries substantially all of whose sales are made outside of the United States, for the years 1955, 1956 and 1957, and for the period January 1, 1958, through September 30, 1958, are:

| 1955 | 1956 | 1957 | Jan. 1-Sept. 30 1958 |
|---|---|---|---|
| $69,594,993 | $54,889,839 | $52,803,772 | $26,482,121 |

2. The total dollar sales of E. I. du Pont de Nemours and Company to each other automobile manufacturing company, exclusive of sales by certain du Pont subsidiaries substantially all of whose sales are made outside of the United States, for the years 1955, 1956 and 1957, and for the period January 1, 1958, through September 30, 1958, are:

3155]

| | 1955 | 1956 | 1957 | To Date Sept. 30, 1958 |
|---|---|---|---|---|
| erican Motors Corp. | $ 486,922 | $ 414,209 | $ 305,172 | $ 299,986 |
| rpenter Body Works | 79,958 | 91,885 | 120,167 | 66,356 |
| se Carrier Industries, Inc. | 13,687 | 19,142 | 20,857 | 7,915 |
| rlier Corp. | 951,122 | 677,114 | 830,548 | 441,864 |
| on Coach Corp. | NA | 9,748 | 19,730 | 11,370 |
| nced T Motor Co. | 139,552 | 127,247 | 120,180 | — |
| ne-Wayne Corp. | 1,691 | 2,395 | 7,109 | 5,350 |
| ebile Co. | 4,848 | 6,306 | 4,400 | 4,613 |
| d Motor Co. | 5,261,339 | 4,654,547 | 5,076,091 | 2,002,354 |
| r Wheel Drive Auto Co. | 1,460 | 3,040 | 4,491 | 3,889 |
| ghtliner Corp. | 2,786 | 32,501 | 51,573 | 21,810 |
| g Bros. | NA | 16,275 | 17,272 | 13,572 |
| rnational Harvester Co. | 734,632 | 286,968 | 165,749 | 74,384 |
| d Trucks, Inc. | 256,102 | 303,101 | 295,728 | 158,040 |
| ple Car & Foundry Co. | 993 | 8,609 | 12,103 | 8,837 |
| ern Coach & Body Co. | 10,545 | 9,040 | 7,965 | 3,375 |
| debaker-Packard Corp. | 747,793 | 240,809 | 213,514 | 70,458 |
| ior Coach Corp. | 82,393 | 59,383 | 30,415 | 28,353 |
| n City Body Co. | 17,467 | 20,547 | 24,897 | 29,103 |
| r Motor Truck Co. | 2,556 | 3,594 | 3,726 | 3,707 |
| d Body Works | 5,441 | 3,303 | 2,019 | 1,646 |
| d La France Truck Corp. | 12,379 | 1,626 | 3,036 | 1,170 |
| r Motor Co. | 63,888 | 79,913 | 58,601 | 120,519 |
| n Motors, Inc. | 18,593 | 10,285 | 28,025 | 27,332 |
| ein-Weiss Co. | 5,867 | 5,295 | 5,819 | 4,290 |
| Other Companies | 19,235 | 12,853 | 19,257 | 29,823 |

[fol. 3156] 3. The amount of Federal tax paid with respect to dividends received by du Pont on General Motors capital stock for each year from 1948 through 1957 is:

| Year | Federal Income Tax Paid |
|---|---|
| 1948 | $ 2,565,000 |
| 1949 | 4,560,000 |
| 1950 | 7,560,000 |
| 1951 | 6,090,000 |
| 1952 | 6,240,000 |
| 1953 | 6,240,000 |
| 1954 | 7,800,000 |
| 1955 | 10,569,000 |
| 1956 | 9,828,000 |
| 1957 | 9,828,000 |

4. The books and records of the du Pont Company do not contain information which would enable the du Pont Company to make a complete and accurate answer to this interrogatory. So far as the books and records of the du Pont Company disclose, the number of shares of du Pont common stock which are administered through any form of trust or

estate as of November 24, 1958 (the record date for the common stock dividend payable December 13, 1958), by

(a) Wilmington Trust Company is as follows:

(1) in sum—545,441
(2) for the beneficial interest of stockholders of Delaware—2.16

(b) Jacksonville Trust Company is as follows:

(1) in sum—none
(2) for the beneficial interest of stockholders of Delaware—none.

/s/ E. L. Gilpin, Assistant Treasurer, E. I. du Pont de Nemours and Company, Wilmington, Delaware

[fol. 3157] STATE OF DELAWARE,
County of New Castle, ss:

E. L. Gilpin, being duly sworn, deposes and says that he is an Assistant Treasurer of E. I. du Pont de Nemours and Company, that he has read the foregoing Answers to Interrogatories, and that they are true to the best of his knowledge, information and belief.

/s/ E. L. Gilpin.

Subscribed and sworn to before me, a notary public in and for the County of New Castle, State of Delaware, this 23 day of December, 1958.

/s/ Henry W. Bryan, Notary Public.

My commission expires Oct. 5, 1959. Seal.

| ical Materials Made Subject To Request Admissions Of Fact Directed To DuPont | Response of DuPont: Now Produced By DuPont Or Produced During Period 1/1/55-9/30/58 | Response of DuPont: Sold By DuPont To General Motors During Period 1/1/55-9/30/58 |
|---|---|---|
| Fabrics, Yarns, and Fibers | | |
| a. Pyroxylin coated fabric | Yes | Yes |
| b. Vinyl plastic coated fabric | Yes | Yes |
| c. Rubberized fabric | Yes | Yes |
| d. Synthetic rubber coated fabric | Yes | Yes |
| e. Tetrafluoroethylene resin coated glass fabric | Yes | Yes |
| f. Rayon textile yarn | Yes | No |
| g. Rayon tire yarn | Yes | Yes |
| h. Nylon textile yarn | Yes | No |
| i. Nylon tire yarn | Yes | Yes |
| j. Polyester fiber | Yes | No |
| k. Acrylic fiber | Yes | No |
| Finishes and Associated Products | | |
| a. Clears | Yes | Yes |
| b. Enamels | Yes | Yes |
| c. Lacquers | Yes | Yes |
| d. Acrylic paints | Yes | Yes |
| e. Graining compounds | Yes | Yes |
| f. Primers | Yes | No |
| g. Sealers | Yes | Yes |
| h. Polishing and rubbing compounds | Yes | Yes |
| i. [illegible] | Yes | Yes |
| j. [illegible] | Yes | Yes |
| Plastics and Films | | |
| a. Acrylic resin (molding powder) | Yes | Yes |
| b. Acrylic syrup (reinforcing type) | Yes | Yes |
| c. Polyethylene resin | No | No |
| d. Polyvinyl butyral resin (flake) | Yes | Yes |
| e. Polyvinyl butyral resin (sheet) | Yes | No |
| f. Cellulose acetate | Yes | Yes |
| g. Nylon resin (soluble resin) | Yes | Yes |
| h. Nylon resin (molding powder) | Yes | Yes |
| i. Polyvinyl acetate solution | Yes | Yes |
| j. Tetrafluoroethylene resin (aqueous dispersion) | Yes | No |
| k. Tetrafluoroethylene resin (molding powder) | Yes | Yes |
| l. Polyester film | Yes | Yes |
| m. Polyester resin (reinforcing type) | Yes | Yes |
| n. Polyester resin (polyurethane type) | No | No[3] |
| o. Acetal resin | Yes | Yes |
| | No | No[3] |

e Government Request "B" Below.

lthough DuPont does not produce a polyester reinforcing resin, DuPont acrylic syrup, r development prior to contemplated manufacture, is considered functionally competitive with.

e Government Request "B" Below.

[fol. 3159] GOVERNMENT TRIAL EXHIBIT No. 182—Continued

| Chemical Materials Made Subject To Request For Admissions Of Fact Directed To DuPont | Response of DuPont<br>Now Produced By DuPont Or Produced During Period 1/1/55–9/30/58 | Sold By DuPont T General Mo During Per 1/1/55–9/30 |
|---|---|---|
| 4. Antifreeze | Yes | Yes |
| a. Ethylene glycol type | Yes | Yes |
| b. Methanol type | Yes | Yes |
| 5. Brake Fluid | No | No |
| 6. Cleaning and Degreasing Chemicals | Yes | Yes |
| a. Acids for pickling and tarnish removal | Yes | Yes |
| b. Aluminum cleaners | No | No* |
| c. Alkaline soak cleaners | No | No |
| d. Alkaline electrolytic cleaners | No | No |
| e. Alkaline and solvent type paint removers | Yes | No |
| f. Glass cleaners | No | No |
| g. Solvent emulsion cleaners | No | No |
| h. Solvent cleaners | Yes | Yes |
| i. Rust removers and preventives | No | No |
| 7. Plating Chemicals | Yes | Yes |
| a. Anodes | No | Yes |
| b. Dips | Yes | Yes |
| c. Brighteners | Yes | Yes |
| d. Plating salts | Yes | Yes |
| e. Addition agents | Yes | Yes |
| 8. Case Hardening Compounds | Yes | Yes |
| 9. Synthetic rubber | Yes | Yes |
| a. Neoprene | Yes | Yes |
| b. "Hypalon" | Yes | Yes |
| [fol 3160] | | |
| 10. Rubber Chemicals | Yes | Yes |
| a. Accelerators | Yes | Yes |
| b. Antioxidants | Yes | Yes |
| c. Lubricants | Yes | Yes |
| d. Wetting agents | Yes | Yes |
| e. Surface conditioning agents | Yes | Yes |
| f. Colors | Yes | Yes |
| g. Organic isocyanates | Yes | Yes |
| 11. Refrigerants | Yes | Yes |
| a. Freon | Yes | Yes |
| b. Methyl chloride | Yes | Yes |

* As to the negative responses in category 6, DuPont reports that certain DuPont cl are produced and sold which can be used in the formulation of some of the compounds for s of the uses designated in (b)–(g) and (i).

GOVERNMENT TRIAL EXHIBIT No. 182—Continued

| ical Materials Made Subject To Request Admissions Of Fact Directed To DuPont | Response of DuPont Now Produced By DuPont Or Produced During Period 1/1/55–9/30/58 | Response of DuPont Sold By DuPont To General Motors During Period 1/1/55–9/30/58 |
|---|---|---|
| Automotive Maintenance Accessories | | |
| a. Acid and rust inhibitor | Yes | Yes |
| b. Water pump lubricant | Yes | No |
| c. Auto wax | Yes | No |
| d. Bug remover | Yes | Yes |
| e. Sealing compound | Yes | Yes |
| f. Soapless car wash | Yes | No |
| g. Chrome polish | Yes | No |
| h. Windshield sealer | Yes | No |
| i. Cooling system cleanser | Yes | Yes |
| j. Cooling system sealer | Yes | No |
| k. Tar and oil remover | Yes | Yes |
| l. Upholstery cleaner | Yes | No |
| m. Gasoline additive to prevent freezing | Yes | Yes |
| n. Heavy duty sealer | Yes | No |
| o. Tire black | Yes | No |
| p. Rubber lubricant | Yes | No |
| q. Auto polish | Yes | No |
| r. Auto rubbing compound | Yes | Yes |
| s. Auto touch-up enamel | Yes | No |
| t. Auto cleaner | Yes | No |
| u. Auto convertible top dressing | Yes | Yes |
| | No | No |

3161]

| ical Materials Made Subject to Request Admissions of Fact Directed to DuPont | Response of DuPont |
|---|---|
| ch of the materials or products listed below is in a developmental stage ior to comtemplated manufacture: | |
| Acrylic syrup (reinforcing type) | Yes |
| Acetal resin | Yes |

ces: Plaintiff's Request for Admissions of Fact directed to E. I. duPont de Nemours & Co. Janaury 12, 1959; Response of E. I. duPont de Nemours & Co. to request for Admissions ed dated February 3, 1959; Deposition of William C. Wall, Mechanical Consultant, E. I. t de Nemours & Co., pp. 71–72. December 1, 1958.

[fol. 3162] GOVERNMENT TRIAL EXHIBIT No. 236

## The Influence of Plastics on the Automotive Industry

By William C. Wall

The automotive and plastics industries each had their beginning at about the same place in our history. The relative rates of growth of these two industries have been quite comparable and each has contributed signficantly to the other.

The automotive industry by tradition is a progressive one. As new and improved materials of construction have become available, automotive engineers have been quick to utilize their ingenuity in the application of such materials for the improvement of the design and function of their product. The modern automoble is a miracle of efficinecy and beauty. Plasties have made a significant contribution to this evolution from the horseless carriage.

Shortly after the first Fords appeared on the market in 1903, the need for a transparent window for side curtains became evident. "Isinglass", thin sheets of transparent mica, had been used for this purpose in buggies and surries, but an improved material was needed for this new modern form of transportation. The plastics industry had the answer—"Celluloid" or cellulose nitrate, the original plastic invented by John Wesley Hyatt in 1869. The material continued in use for this purpose until the late twenties when the closed car evolved.

In 1910 the Delco Corporation announced the first direct current, low voltage ignition system to replace the magneto. The distributor head used in this system was made of a new material, "Bakelite" phenolic resin, far superior to the hard rubber used in magnetos. This was the first significant use of a thermosetting resin by the automotive industry. Most distributor heads today are made from the same material.

During the period between 1910 and the end of World War I, there was no progress of significance in either the automotive or plastics industries. In fact, it is doubtful if the manufacture of plastics was of sufficient magnitude to warrant use of the term "industry". Prior to 1925 some 2,200 different makes of cars made their appearance on the American market, most for a very brief period of time.

Many of these cars incorporated radical design features, conceived by individual inventors, that proved in service to be impractical either machanically or economically.

Gradually, during the twenties, the present pattern of the industry evolved. Firms with sufficient financial strength to afford adequate engineering staffs, facilities for economi- [fol. 3163] cal mass production and sales organizations to support those facilities were able to establish themselves in positions of leadership. Many smaller producers were victims of the depression of the late twenties. Apperson, Durant, Star, Page, and Franklin are names that passed into oblivion during this period, but a few brands, Ford, Chevrolet, Dodge, Hudson, Buick, Packard and Cadillac remain as leaders in their fields today.

The only significant use of plastics in the automobiles of the twenties was in side curtain windows. This was big business for a few years but faded rapidly when the sedan and coupe replaced the touring car and roadster in the public fancy during the late twenties and early thirties. This was not a permanent loss of business, for increasing speeds and an increasing accident rate soon made the use of safety glass an essential precaution. Ford Motor Company first offered safety glass as optional equipment in 1932. The rest of the industry quickly followed suit, and the resulting sales of cellulose nitrate sheeting was substantially greater than it had been for use in the side curtain windows of earlier days.

Cellulose nitrate had a fairly short life as a safety glass interlayer. It discolored rapidly when exposed to sunlight and was very moisture sensitive. A newly developed material, cellulose acetate, partially overcame these faults. By 1936 it had replaced cellulose nitrate sheeting amost entirely for this use. In spite of extensive research to improve this new product, more rigid requirements on the part of the automotive industry made its deficiencies very apparent. Poor color haze, moisture sensitivity and low temperature brittleness were the major shortcomings of cellulose acetate as an interlayer material. Plastic research chemists went to work on this problem. In 1938 du Pont and Carbide and Carbon Chemicals Corp. announced a new, vastly improved, safety glass interlayer material, polyvinyl butyral resin. This new resin proved to be superior to the older materials in many respects. It was water white in color

and almost entirely free from haze. It was insensitive to moisture to the extent that sealing of the edge of the laminate was no longer necessary. In addition to its good optical properties, polyvinyl butyral also proved to have exceptional toughness at low temperatures and fractured with a yielding break on impact, which contributed greatly to the reduction of head injuries in collisions. Within two years of its introduction, polyvinyl butyral resin was universally accepted by the automotive industry and is the standard safety glass interlayer today.

If the twenties were a "Golden Age" for the automotive industry, certainly the thirties were the same for the plastics industry. Two important events combined to start the plastics industry off on a flood tide of activity that even today shows no sign of slackening. The first thermo-plastic molding composition, cellulose acetate, was introduced on a commercial basis in 1929 and the first practical injection molding machine, the "ISOMER", was imported from Germany a short while later.

[fol. 3164] With suitable thermo-plastic resins, injection molding proved to be a highly efficient technique for producing complex precision moldings in large volume with low fabrication costs. Cellulose acetate exhibited many of the desirable physical properties to complement this new production technique and so opened the way to vast industrial markets previously closed to plastics. The automotive industry constituted one of the most important of these new industrial markets for injection molded plastic parts. Dies for injection molding may cost from a few thousand to well over a hundred thousand dollars. This was to deterrent to automotive people because of the large number of duplicate parts required for the production of a single yearly model. Because of the large volume required, even a small reduction of the manufacturing cost per piece results in a substantial saving on a year's production.

In addition to lowered manufacturing costs, the use of cellulose acetate opened a whole new field of interior styling, because this material could be produced in an endless variety of colors. It was first used for door latch and window regulator knobs, shift level knobs, control knobs, for the instrument panel and similar parts. Interior decorative trim, horn buttons, ash tray knobs and lids followed.

Perhaps the most important automotive use of cellulose acetate has been for steering wheels. Prior to 1934, essentially all automobile steering wheels were molded from hard rubber. Although this was a reasonable satisfactory material for the purpose, it was available in only one color—black. Steering wheels injection molded from cellulose acetate could be produced in an endless variety of colors, to satisfy the stylist and also offered economic advantages as well. Such wheels were first offered as optional equipment by Buick and Cadillas on 1934 models. Within the next two years they were available on most makes as accessory equipment. By 1940 cellulose acetate steering wheels were standard equipment throughout the industry. Cellulose acetate or acetate butyrate is the standard material for steering wheels today.

Laminated phenolics, both paper and fabric base, were extensively used during the thirties for electrical insulation, in timing gears and for instrument panel backing. Such materials were used to some extent for interior trim, especially in commercial vehicles such as taxis and buses. Most timing gears today are made from fabric base phenolic laminates, although silent chain drives have largely replaced gears in today's passenger car engines.

Ethyl cellulose, polystyrene, cellulose acetate propionate, cellulose acetate butyrate and vinylidene chloride, were among the thermo-plastic materials introduced during the late thirties and all found limited use in the automotive industry.

[fol. 3165] The real "glamour girl" of the plastic family, acrylic resin, was introduced by du Pont as a molding powder in 1936 under the tradename "Lucite". Rohm and Haas followed with a similar product in 1938 using the tradename "Crystalite", later changed to "Plexiglas", as it is now known.

This new crystal resin was an automotive designer's dream. It could be produced in an unlimited color range, from the lightest transparent tint to full opaque and from the whitest white to blackest black. It could be injection or compression molded into the most intricate of shapes with great precision. Its optical properties were equal to the finest of optical glass. This resin was tough and rugged and essentially unaffected by prolonged outdoor exposure in any climate. There is little wonder that it swept the

industry. Increasing size of tail and stop light assemblies, made practical by the moldability and light weight of this resin, has dictated present fender shapes to a considerable extent. The all-acrylic top for convertibles, introduced in 1947, may well have inspired the present hard top designs. We are all familar with the jewel-like horn buttons, hood ornaments, and decorative medallions, produced from acrylic resins by back painting and metallizing techniques. All of these applications contribute to the high style of today's automobile.

Although the most extensive use of this glamour plastic has been for decorative purposes, its excellent physical properties have made it useful for many functional applications as well.

Because of the greater optical accuracy that can be obtained, the efficiency of reflectors molded from acrylic resin far surpasses those made from glass. This, together with the material's resistance to breakage and its indifference to outdoor weathering has lead to its universal use for tail and stop light lenses, direction signals and parking lights.

Prior to the advent of acrylic resin, automobile instrument panels had changed but little in the history of the industry. Individual instruments were round, with flat glass lenses and metal bezels. Lighting was indifferent at best and the glass lenses presented a very real safety hazard. Crystal clear acrylic resin, easily and economically fabricated into complex contours by injection molding, brought an entirely new concept of instrument design into being.

This plastic permitted the grouping of instruments into efficient clusters for improved legibility and more pleasing appearance. The unique ability of acrylic resin to conduct light and "pipe" it around corners enabled designers to develop highly efficient instrument lighting systems. Our [fol. 3166] instrument panels of today may be scanned at a glance, either by day or by night. They are free from glare and offer no hazard from glass breakage in case of accident.

A new acrylic lacquer, recently announced by du Pont gives promise of overcoming many of the faults of older automotive finishes. This new lacquer has processing characteristics quite similar to those of cellulose nitrate lacquers. Its superior resistance to the effects of weathering means that little waxing will be required during the

normal life of the car to maintain the original beauty of the finish. The exceptional gloss retention of "Lucite" lacquers permits the introduction of a wide range of "glamour" colors, not sufficiently durable in car finishes of the past to be practical.

The use of vinyl polymers and copolymers for interior trim items has increased rapidly during the past few years. The vinyls have excellent resistance to scuffing and abrasive wear and are little affected by gasoline, oils or greases. Embossed vinyl sheeting is a popular material for upholstery, scuff pads and door panel liners, especially for convertibles and station wagons. Vinyl sheeting is handsome in appearance, has excellent wear characteristics and does not soil readily. Wet bathing suits or a window accidentally left open during a thunder shower are no cause for concern with vinyl upholstery.

Vinly moldings are used for glass seals, pedal pads, door bumpers, gaskets and similar mechanical applications in many of today's automobiles.

Prior to 1946 plastics in general received little serious consideration from automotive engineers for strictly functional uses. Experience in the functional use of plastics in military equipment during the war years, coupled with the introduction of new compositions having vastly improved mechanical characteristics, paved the way for the tremendous increase in the industrial use of plastics that we have witnessed in recent years.

The opening of these industrial markets for plastics has not been an easy job, either for the plastics producer or for the engineers who have pioneered the use of plastic components in their designs. The performance requirements of a child's toy or a bathroom tumbler are very simple and easily understood. The field failure of such an item is not to be desired, of course, but if a few failures are encountered it is not too serious a matter. The performance requirements of a precision mechanical component of a device such as an automobile, for instance, is however, quite a different matter.

[fol. 3167] I think we can say that the functional use of plastic in industrial equipment began in 1946. Prior to that time the plastics industry had had, at best, only limited experience in the injection molding of precision close tolerance parts. There had been no demand for such moldings.

As acceptance of plastics in functional applications has grown, the demand for greater precision has also grown. To meet this demand it has been necessary to develop new techniques for processing plastics and to improve the old techniques. More precise methods of test and more exact standards of quality control have been required to reduce lot to lot variation of physical properties to a tolerable level. Improvements in both equipment and methods for processing plastics have been made continuously. New concepts of die design have had to be evolved to meet the demands of industry for more complex moldings. Certainly this progress will continue.

Improvement in processing techniques is only a part of the story. We have had to improve our engineering skills even more perhaps than our processing skills. In order to utilize a material of construction to best advantage, it must be possible to predict with a considerable degree of accuracy how that material will behave under anticipated service conditions. To use plastics successfully in functional applications, whe have had to greatly broaden our knowledge of the effects of changing environmental conditions on the physical properties of these materials. We must know the effects of extremes of temperature, of moisture, of rates of loading and many other factors that may influence the performance of a part in service. As we broaden our knowledge of the behavior of plastics, we also broaden their fields of usefulness. We have often heard that the utilization of plastics is only limited by the imagination of those working with them, but we are forced to add, "and their engineering knowledge of these materials."

The first thermo-plastic that could truly be classed as an engineering material was nylon polyamide resin. This polymer, introduced as a plastic molding composition to American industry by du Pont in 1946, was already well known as a textile material. Although it had had some limited use in mechanical components for military equipment, it proved to be a difficult task to convince engineers that a material used to make sheer ladies' hosiery had any merit as a material from which to make gears, bearings, and similar mechanical components, It seemed a far cry indeed from a lady's slip to a shackle bushing. In fact, it did take almost three years of effort before the first automotive application of nylon was released for production

This first application of nylon could hardly be classed as a mechanical application, although it was definitely a func- [fol. 3168] tional one. It was a dome light lens! Nylon proved highly successful in this application, both from the standpoint of performance and cost. Within one year five other manufacturers were using similar lenses and today almost every American car is equipped with one or more interior lenses molded from nylon resin. The one-piece dome light construction now common to the industry is designed around the ability to snap a nylon lens into the lamp after it is installed.

The second major use of nylon by the industry was in door latch wedges. These were first used by Ford in 1951 and have been used on some models every year since. They assure a tight, smoothly operating door latch that does not require lubrication. The hazard of grease staining of clothes is thus avoided.

One-piece speedometer take-off gears injection molded from nylon followed. These gears operate quietly and smoothly and show little or no wear during the life of the automobile. Manufacturing cost for the nylon gear is less than half that of the gears replaced. Nylon "speedo" gears are now standard throughout the industry.

Today you will find nylon parts in essentially every car on the road. Window regulator gears, transmission governor gears, windshield wiper gears, brake pedal bushings, electrical parts, carburetor components and even tire valve caps. There are hundreds of nylon parts in production in the automotive industry today. Each of these parts has been proven to be sound from an engineering standpoint. Each offers definite economic advantage as well as improvement in performance and service life.

Polyethylene has not found extensive use in the automotive industry, as yet, except for wire and cable insulation, and as monofil in woven seat covers. However, the use of polyethylene film as a disposable protective cover for automobiles in transit is growing and may well become standard practice in the near future.

Although the fluorocarbons carry the highest price tag in the plastics industry, there are a number of automotive applications where their unique physical properties have been used to advantage. "Teflon" Tetrafluoroethylene Resin is being used in a few specific applications such as

bushings and shaft seals where its self-lubricating properties and its ability to withstand service temperatures of 400° F. or better make its use essential. With automobiles as with other machines, increasing power and speeds result in corresponding increases in operating temperatures. I think we can surely predict an increase in the use of fluorocarbon polymers as a result of anticipated higher operating temperatures for automatic transmissions, rear axle assemblies and accessories such as air conditioners and power brakes.

[fol. 3169] Perhaps the most spectacular development in recent years is the rapidly increasing use of reinforced plastics in automotive bodies and components. The idea of plastic bodies for automobiles is not a new one. In the mid-thirties Henry Ford created a sensation with his soybean plastic body panels. Although plastics made from soybeans never progressed beyond the experimental stage, Mr. Ford's basic idea was certainly a sound one.

The idea of a "plastic automobile" seems to appeal to the imagination of the general public. I think a poll would show that most people visualize the car of the future as being made from plastic, and I think they are right. The only real question is how far away is the future.

A complete body and frame for an automobile was constructed from reinforced plastic as early as 1946. Since that time there has been a constant parade of sports cars, custom built automobiles of conventional design and "dream cars of the future" equipped with bodies of reinforced plastic. From the performance standpoint most of these have been quite satisfactory.

Tooling costs for the production of a plastic body may be as little as one-fifth the cost of tools for a comparable body of metal. A single show car or a limited production sports car can be constructed from reinforced plastics much quicker and at far less cost than is possible with metal-working techniques. There are examples in fact where the "do-it-yourself" boys have built very acceptable "custom" automobiles in their own garages.

Most large semi-trailers for "over the road" service are built on a custom basis. Reinforced plastic construction is well suited for this type of operation. Tooling costs are held to a minimum, yet the designer has a great deal of freedom in meeting the needs of his client. Tanks for oil

and chemical transport trailers, having capacities as large as 3,400 gallons, have been constructed from reinforced plastics and have proven to be satisfactory in service. Operating experience has shown that these structures require little or no maintenance for extended periods, and efficiency has been improved significantly through the weight reduction made possible by the use of reinforced plastic construction.

As production volume is increased, tooling costs become less important with respect to unit manufacturing cost. With present techniques unit manufacturing costs for complex structures of reinforced plastics are substantially higher than for corresponding metal structures and the economic advantage of low tooling costs is lost. Major [fol. 3170] improvements in the techniques for fabricating reinforced plastics must be made before we can expect to see all-plastic bodies on the family automobile. It has taken many years to develop the skills and techniques of metal fabrication employed on today's assembly lines. We must attain equally efficient methods for the fabrication of reinforced plastics before the metal automobile body will become a relic of the past.

In less complex shapes the cost picture for reinforced plastics is more optimistic. This year Studebaker is effectively combining reinforced plastic components with metal to achieve a variety of "high style" effects at minimum cost. Rear fender fins on the new "Golden Hawk" sports cars are made from reinforced plastic; also the attractive one-piece instrument panel. Rear fender fins of reinforced plastic are also used on Studebaker's 1956 line of station wagons.

The folding top cover of the Cadillac Eldorado for 1956 is made of reinforced plastics and is designed for trunk storage when not in use. Air conditioner and heater ducts of reinforced plastics are being used by a number of manufacturers on 1956 models, including Chrysler and Nash.

The Chevrolet Corvette, the first production model by a major manufacturer to be equipped with an all-plastic body, was reintroduced early this year with new styling and improved performance. A removeable hard-top molded from glass-reinforced polyester resin is available as optional equipment. Similar tops are available for the 1956 Thunderbird and a number of well-known sports cars.

This activity in the industry is ample evidence of the progress that is being made in the development of improved techniques for the efficient fabrication of reinforced plastic structures on a mass production basis.

In addition to the progress being made with glass reinforced thermo-setting resins, recent developments in the combination of synthetic rubbers with thermo-plastic resins offer considerable promise for structural use, especially in automotive interior trim. The styrene copolymers are typical of this class of plastics. Both flexible and rigid materials can be produced by varying the composition of these copolymers. They are thermo-plastics, and in sheet form may readily be shaped by conventional vacuum and plug forming techniques. These materials lend themselves to a wide variety of decorative surface treatments. Surfaces may be grained to almost any desired finish. Two-tone color effects may be obtained in much the same way these effects are produced on coated fabrics. Silk screen printing and vacuum metalizing are effective surface treatments for these materials.

[fol. 3171] Styrene copolymers are tough and stiff and have a useful service temperature range of from —60° to 220°F.

In sheet form these materials are being used in 1956 models for center pillar covers in four-door hard-top convertibles, in instrument panel trim applications and for door trim pads. Probably the largest single plastic part ever used on a production model automobile is the headliner, formed from styrene copolymer sheeting, for the 1956 Plymouth "Suburban" station wagon. This piece weighs around six pounds. This same model is also equipped with a one-piece wheelhouse cover formed from this plastic.

Plastic foams, both polyurethanes and vinyl chloride, are being used extensively for the first time this year. Many of the safety pads on 1956 models are made from these materials. The physical properties of these new plastic foams can be varied over a wide range according to the requirements of the particular application. They may be produced in a range of densities and resilience according to need and may be fabricated by a variety of techniques. Plastic foams are so new to the industry that many of their potential uses have yet to be developed.

Another interesting innovation on 1956 models is the

use of "Mylar" polyester film as decorative trims on door panels and other interior surfaces. This tough, wear-resistant film, when embossed in an attractive pattern and vacuum metalized on the reverse side, provides a scuff-proof soil-resistant surface that is most attractive in appearance. An almost endless variety of effects may be achieved by the use of tinted film and different patterns of embossing.

There are three fundamental reasons why plastics are important to the automotive industry today and why they will grow in importance in years to come. First, plastics offer the designer a number of useful properties, in various combinations, not available in any other class of materials. Second, the raw materials needed to manufacture plastics are in ample supply to meet any foreseeable requirements. Third is the simple element of economics.

There are some twenty-five basic types of plastic resins in commercial production in the United States today. There are hundreds of variations of each of these basic types, each designed to give a specific combination of physical properties required for particular fields of usefulness. Success in the functional use of plastics depends, to a considerable extent, on the ability to select the particular plastic composition having the optimum combination of properties to meet the requirements of the job at hand.

[fol. 3172] It is difficult to enumerate all of the properties that contribute to the usefulness of plastics. It is not so difficult to define areas of improvement that would greatly increase their usefulness to the automotive industry. We need materials having greater stiffness so that large area panels can be fabricated that will be both rigid and light in weight. Materials less susceptible to dimensional change, as a result of variations in environment, would extend the use of plastics in precise mechanisms. Improved chemical resistance, including resistance to the effects of weathering, would permit wider utilization of plastics for outside trim and other exterior applications. The combination of good optical clarity with mar or scratch resistance would open new design opportunities for the incorporation of transparent areas not now practical.

The ability to tolerate higher service temperatures and withstand the effects of oxygen and ozone would lead to increased "under the hood" applications. In view of the

progress that has been made during the past ten years, there is little doubt that the research chemist will be able to answer many of these basic needs in the not-too-distant future.

Let's take a look at some of the typical uses of plastics in the automobile of today. You will find plastics serving and serving well in every section of the modern automobile. In the engine, body, suspension, electrical system and among the accessories you will find plastics contributing to the efficiency and comfort of your automobile. Of some one hundred and five applications that we have listed as typical of most makes of automobiles, over 80% have come into general use during the past five to six years. Each of these uses is technically sound and economically attractive. If we attempted to chart every specific automotive application of which we are aware, such a chart would be so complex as to be almost meaningless.

It is difficult to find a common denominator to enable us to make an accurate comparison of the relative rates of growth of the automotive and plastic industries. We have tried to get some idea of this picture by plotting units of production for the automotive industry and thousands of tons of plastic materials produced annually for the past twenty-five years. This plot graphically illustrates the tremendous expansion of output of the plastics industry during the past ten years. Increased utilization of plastic materials by the automotive industry has most certainly been a significant factor in this expansion.

The automotive industry is a highly competitive one. There is not only competition within the industry with each maker fighting for his share of the automotive market but the industry as a whole competes for its share of purchasing [fol. 3173] dollars with a number of other industries. Major appliances, such as air conditioning, real estate, travel and several other markets are in active competition for the dollars that might otherwise be earmarked for the purchase of automobiles. To compete successfully every automotive manufacturer is constantly striving to build more value into his product per dollar of cost. Manufacturing efficiency is only part of the story. New styling, new features, new comfort and improved performance are the constant goal of the automotive designer in this never

ending race to maintain or improve position in the market place.

Plastics can, and will, contribute much to the ability of the industry to continue to improve the use value per dollar of the American automobile.

An examination of the price trends of the metals over the years show them to be constantly upward. In spite of improved technology in the conversion of raw ores to finished metal products, the gradual decrease in the quality of ores available has had an inevitable effect on production costs. There is little evidence to indicate any change in this trend in years to come.

In the case of plastics, quite the reverse is true. The price trend of plastics has been downward throughout the history of the industry. As the volume of plastic production increases efficiency is improved and selling price tends to go down.

In terms of pounds, the amount of plastics, of all types, used on today's automobile is astonishingly small. It will only average ten pounds of material per car in 1956! This is approximately three one-hundredths of one per cent of the gross weight of the average family automobile.

Here is a real challenge for the polymer chemist. We know the market exists and we know what is required to capture a substantial percentage of this market. Economic trends are entirely favorable to a thousand-fold increase in plastic sales for automotive uses if polymers having the required physical properties are provided.

In mechanical applications particularly, most of the plastic parts in use today are small in size and secondary in function. We must start thinking in terms of major components having primary functions. An experimental carburetor fabricated entirely from nylon performed well when tested on a small utility engine. There is no sound technical reason why the largest automotive carburetor could not be made the same way. Timing gears, transmission gears and similar components fabricated from nylon have operated [fol. 3174] successfully in a five horsepower garden tractor. No great imagination is required to visualize improvements in existing polymers to permit the design of similar components for passenger automobiles.

A few years ago plastic injection moldings were limited to from sixteen to twenty-four ounces. No larger injection

machines were then available. Today machines are in operation that will mold three hundred ounces or more at one shot. We could conceivably mold one half of a front or rear seat of an automobile in a matter of minutes, perhaps even completely upholstered as it comes from the die. Surely one day we will be able to injection mold a door panel, a trunk door or an entire hood as a one piece unit! As new polymers are developed and new fabricating techniques are perfected these things will surely become practical, and they will bring more automobile and a longer lasting automobile for our purchasing dollar.

In the plastics industry we try to visualize our future course, to set goals and estimate when we will achieve those goals. Let us apply this theory of extrapolation to automotive design trends and see what it will tell us. If for instance, we plot the net weight of typical tail light assemblies against gross automobile weight for the past ten years and then extrapolate out to 1975, we might arrive at some idea of the effect of this trend on the appearance of the family car of that year. We have done just that and we would like to present our prediction of the appearance of such a car. "Lower, longer, and more room!" A facetious thought perhaps, but illustrative of the progress we expect to see during the next twenty years.

[fol. 3175] GOVERNMENT TRIAL EXHIBIT No. 255

267,678 Shares

GENERAL MOTORS CORPORATION

Common Stock $1 2/3 Par Value

Negotiated Non Registered Secondary

| | |
|---|---|
| Buying Officer: | Messrs. Glavin-Bentley |
| Vendor: | Estate of Evelyn Mendelsohn, Deceased |
| Managers: | Hallgarten & Co. |
| | The First Boston Corporation (ran books) |
| Managers Participation | 40,089 shares—14.98% each |
| Offering Date: | February 17, 1958—4:25 P.M. |
| Offering Terms: | $34.00 (stock closed 33⅞–34, last sale 34) |
| | Concession 80 cts |
| | reallowance 25 cts |
| Purchase Price: | $32.80 |
| Gross Spread: | $ 1.20 (3.53% of offering px) |
| Management Fee: | .125 (10.42% of gross) (50% each Mgr) |
| Underwriting Profit: | .275 less expenses |
| Payment & Delivery: | February 21, 1958—N. Y. |
| Stabilization: | None |
| Subscription Book Closed: | February 17, 1958—4:30 P.M. |
| Underwriters Trading Restrictions Removed: | February 18, 1958—10:45 a.m. |
| Public Advertising: | Market: 34⅛ |
| | Was over names of Hallgarten and First Boston |

The offering was quickly sold. The books were run by the FBC. The representatives retained 117,558 shares and sold 105,995 shares to 232 dealers, 1,100 shares to 5 dealers for a designated sale to the Delaware Fund, and 20,000 shares to one underwriter (Merrill Lynch) The short position of 9,537 shares was covered at prices ranging from 34⅛ to 34½.

The FBC had an underwriting commitment of 40,089 shares, of which 36,729 shares were given up for sale to dealers and the remaining 3,360 shares were retained and sold to retail customers.

For complete details of the offering see—Performance Records.

[fol. 3176] GOVERNMENT TRIAL EXHIBIT No. 268

33,671 shares Common Stock

ALUMINIUM LTD.

Non Registered
Negotiated

| | |
|---|---|
| Vendor: | Roy A. Hunt—Pittsburgh, Pa. |
| Public offering date: | 3 P.M. July 26 to 10 A.M., July 27, 1950 |
| Public offering Price: | $63.875 per share |
| Purchase Price: | 62.275 " " |
| Gross Spread: | 1.60 " " |
| Selling Concession: | 1.00 " " |
| Management Fee: | .25 " " |
| Underwriting Profit: | .35 " " less pro rata expenses |
| Reallowance: | .25 " " |
| Payment & Deliver | N. Y., July 31, 1950 |

The original offering consisted of 56,210 shares but was reduced to an underwriting of 30,000 shares with an option on the remaining 26,210 shares when it became evident that the entire deal could not be done. A total of 3671 shares of the option stock was taken up.

This stock was offered at the time of the Korean war, the stock market being off considerably while this stock was up about 7½ points.

As manager, the First Boston Corporation sold 16,621 shares to 42 dealers. The Underwriters retained a total of 17,511 shares, a short position of 461 shares were subsequently covered.

The First Boston Corporation had an Underwriting commitment of 7350 shares of firm stock and its share of the option stock taken up was 900 shares. A total of 4150 shares were sold retail and the remaining 4100 shares were given up for dealer sales.

[fol. 3177] GOVERNMENT TRIAL EXHIBIT NO. 269

333,000 Shares

ALUMINIUM LIMITED

Capital Stock (without nominal or Par Value)

Negotiated Deal: (non registered Secondary)
Buying Officer: Mr. Townsend
Vendors:

| | |
|---|---|
| Paul Mellon | 25,000 |
| Old Dominion Foundation | 50,000 |
| Avalon Foundation | 40,000 |
| Richard King Mellon Foundation | 34,500 |
| Sarah Mellon Scaife Foundation | 12,500 |
| Mellon Institute of Industrial Research | 11,000 |
| Donald D. Shepard, George W. Wyckoff and Mellon National Bank and Trust Company, Trustees, under Deed of Trust of A. W. Mellon dated December 28, 1934 | 14,220 |
| Donald D. Shepard, George W. Wyckoff and Mellon National Bank and Trust Company, Trustees under Deed of Trust of A. W. Mellon dated December 28, 1934 | 18,870 |
| Donald D. Shepard, George W. Wyckoff and Wilmington Trust Company, Trustees, under Deed of Trust of Ailisa M. Bruce dated August 6, 1935 | 16,910 |
| Arthur V. Davis | 100,000 |
| Roy A. Hunt | 10,000 |
| Total | 333,000 |

Managers: The First Boston Corporation 30,000 Shares (9.01%)

A. E. Ames & Co. were a Co-Manager to the extent that they underwrote 125,000 shares which was sub-underwritten by various Canadian Dealers.

Public Offering Date: February 27, 1951 3:00 P.M.
Offering Terms:
Purchase Price: $91.00 Concession $1.65 Reallowance 35 cts.
Gross Spread: $87.85
Management Fee: $ 3.15
.4725 (15% gross) ⅔ to FBC
⅓ to A. E. Ames

(Mgmt fee to be paid by all o/w including FBC & Ames)

[fol. 3178]

Underwriting Profit: 1,02[illegible]5 less expenses (Estimated 15 cts.)
Payment & Delivery: March 6, 1951 Pittsburgh
Stabilization: None
Subscription Books Closed: February 27, 1951
Selling Agreement Terminated: February 28, 1951 (close)
Trading Restrictions Removed: February 28, 1951 (close)
Market 91-91½

On March 5, it was announced that the peg on gov 1¾-55 had been removed leaving only the Victory 2½ 67/72 being supported. This caused the stock market to sell off 4 pts. On March 8, announcement was made that the support of Victory 2½ had been discontinued leaving all governments on a free market, thus causing a further decline in the stock market.

On March 15, ALI was quoted 84-84¼.

The First Boston Corporation had an underwriting commitment of 30,000 shares of which 10,000 shares were given up for sales to dealers and 20,000 shares were taken down for its own retail sales. The First Boston Corporation also purchased 240 shares less the selling concession.

Prior to the offering, The First Boston Corporation invited dealers to attend meetings held in Boston, Chicago, San Francisco, Los Angeles, Philadelphia, Cleveland, Pittsburgh and New York. These meetings were all well attended and representatives of the Company and the First Boston Corporation discussed present and future information concerning the company.

This stock was sold pursuant to anti-trust proceedings brought by the Government. In its judgment entered July 6, 1950, the Court required certain stockholders of Aluminium Limited and Aluminum Company of America to dispose of their holdings in one of the two corporations pursuant to a plan to be submitted to the Court. Under a further judgment entered January 16, 1951, subsequent to the submission of the plan, stockholders holding in the aggregate 1,292,175 shares of the Common Stock of Aluminium Limited were required to dispose of all their shares in that Corporation within ten years, and, if reasonable market conditions prevail, approximately 300,000 of such shares were to be disposed of within three years and 200,000 more within five years from the entry of the judgment. Pending such disposition, the voting rights with respect to these shares will be vested in three trustees named in the judgment. Other stockholders holding in the aggregate 524,195 shares, while not required to dispose of their holdings, will be required to vest in such trustees the voting rights with respect to their shares during the disposal period. Another stockholder holding 34,500 shares of Aluminum Company of America and 36,000 shares of Aluminium

[fol. 3179] Limited will be required to dispose of his shares in Aluminum Company of America and to vest in such trustees his voting rights with respect to his shares in Aluminium Limited during the disposal period. In the judgment of July 6, 1950, the divestiture of plants and properties of Aluminum Company of America for which the Government had petitioned was denied but jurisdiction was retained by the Court for a period of five years from the entry of the further judgment.

At the time of the offering, the managers had received indication for four to five times the amount of stock available in the Selling Group. A total of 125,000 shares were sub-underwritten by Canadian dealers. American underwriters retained 183,915 shares for retail, and the representative sold 30,590 shares to 126 dealers on Selling Group terms. The short position of 6,505 shares was covered by repurchasing 3,733 shares from underwriters. Selling group members @ 91 less $1.65 and the purchase of 2,772 shares on the NYSE @ 91 plus comm. For complete details of the offering see the Performance Records.

3/15/51

---

[fol. 3180] GOVERNMENT TRIAL EXHIBIT No. 270

372,205 shares

ALUMINIUM LIMITED

Capital Stock Without nominal or Par Value

No Underwriting

Dealer Managers: The First Boston Corporation (American Group)
A. E. Ames & Co., Ltd. (Canadian Group)

Offered to holders of outstanding shares at the rate of one share for each ten shares of record Oct. 19, 1951.

Subscription Price: $65.00 Canadian Funds

(Soliciting Dealers Fee (Paid by the Company)) .37 " " with a maximum of $370.00 for any one registered holder.

Subscription offer expired: November 8, 1951

Approximately 147,000 shares were covered by rights held by certain stockholders who had surrendered their voting rights to Trustees, by terms of a Judgement dated January 1951. A total of 147,436 shares of this stock was made available to the managers for simultaneous offering in The United States and Canada.

Of these shares The First Boston Corporation offered

75,143 shares on October 18, 1951 @ $99.75 less a concession of $1.50 per share. The First Boston Corporation received a Commission of 18¼¢ per right which made a gross of $1.825 per share. Subscriptions were received for 95,000 shares and a total of 72,340 shares were allotted to 96 dealers. The First Boston Corporation sold 5,528 shares to retail customers and the 2,725 shares were covered through open market purchases.

At the same time A. E. Ames & Co., Ltd. offered 72,293 shares in Canada @ $105 Canadian less $1.20.

A dealers meeting was held on Oct. 15, 1951 at the Great Hall of the Chamber of Commerce in New York and a motion picture describing the Company's operations was shown and representatives of the company were present to answer questions. The meeting was well attended.

[fol. 3181] 186 Soliciting dealers were paid a total of $18,525.74 U.S. covering 59,740 shares which were deposited in The United States and The First Boston Corporation received Compensation of $4633.24 (U.S.) on 16,150 shares on which it was designated as the Soliciting Dealer.

As compensation for services rendered in connection with the offering compensation of $52,500.00 Canadian was paid to the Dealer Managers. A. E. Ames & Co., received ⅓ of this sum and the First Boston Corporation ⅔. The First Boston Corporation's compensation after expenses amounted to $15,360.77 U.S. An additional profit was made in the secondary offering of 75,143 shares.

For complete details, see the Performance Record.

January 30, 1953

To: Mr. James Coggeshall, Jr.

Re: ALI—the following paragraph was taken from a letter written to A. E. Ames & Co. Ltd. and signed by Nevil Ford on October 10, 1951:

"We agree to purchase for your account 33⅓% of the rights which we may acquire from certain large shareholders and to deliver them to you in New York. Each of us agrees forthwith to exercise the rights thus acquired. The purchase price to you of such rights shall be the same as the net cost to us of the rights we acquire for our own account. You agree to reimburse us for transfer or other

taxes, if any, applicable to your rights and not paid by the selling shareholders. Such purchase price and taxes, if any, shall be payable in U. S. Currency, or, if mutually-agreeable, in the equivalent Canadian currency. None of the expenses which each of us may incur by the purchase and exercise of such rights and sale of stock covered by such rights shall be charged to the Dealer Managers' fee.".

W. B. Chappell.

---

[fol. 3182] GOVERNMENT TRIAL EXHIBIT No. 275

818,657 Shares

ALUMINIUM LIMITED

Capital Stock without Nominal or Par Value

| | |
|---|---|
| Subscription Offer: | To holders of outstanding common of record April 24, 1953, right to subscribe on basis of 1 additional for each 10 shares held. |
| Subscription Price: | Canadian Dollars $33.50 per share<br>United States Dollars $34.00 per share |
| Warrants Expired: | 3:00 p.m. EDST May 15, 1953 |
| | Of the 818,657 shares offered for subscription, 816,090 shares were subscribed for The Company did not make any offering of the 2,567 unsubscribed shares. |
| No Underwriting: | |
| Dealer Managers: | United States FBC—White, Weld & Co.<br>Canada A. E. Ames & Co. |
| Soliciting Dealers Compensation: | 31¢ per share with maximum of $310 (Can. or U.S.) to any single holder of warrants. |
| Dealer Managers Compensation: | $60,000 divided 40%—First Boston Corporation<br>35%—White, Weld & Co.<br>25%—A. E. Ames & Co. |
| Dealers Meetings: | San Francisco—Los Angeles—Houston—Chicago—Cleveland—Boston—Hartford—New York—Philadelphia. |

Soliciting dealer fees totaling $54,920.53 covering 225,891 shares were paid to 314 dealers. The First Boston Corporation received $2,345.77 from customer subscriptions and $4,505.23 from rights purchased to cover short sales made during the subscription period.

Re: Sellers of rights and possible 75,000 shares of stock.

The First Boston Corporation, as Representative, formed an underwriting group of 173 members to purchase 2,490,031 Rights (249,003 shares) and approximately 75,000 shares of stock which might be sold by certain Selling Stockholders. Arrangements were made with A. E. Ames & Co Limited whereby the First Boston Corporation would waive the payment of any compensation by Ames with the respect to

an aggregate of up to 25% of the Rights and up to 25% of the Outstanding Stock purchased from the Selling Stockholders.

Possible Spread of Rights and Stock

The potential sellers of the above agreed that if they sold these securities to the Underwriters, there would be a minimum of 14½¢ on the rights and $1.45 per share on the stock.

[fol. 3183] Due to the decline in the market, the selling stockholders decided not to sell their stock, therefore only the Rights were sold (249,003 shares), A. E. Ames & Co. taking 25% (62,260 shares which were offered in Canada at 41⅛ less $1.15) and the remaining 75% (186,753 shares) were purchased by the American group.

Although White, Weld & Co. were not co-managers on this part of the offering, their name appeared in the advertisement of the issue as agreed upon between Mr. Coggeshall and Mr. A. M. White.

On March 16th the stock closed at $52 per share. On March 17th we offered a secondary of 40,000 shares of stock at the closing price which was $51 per share, and on March 19th prior to the announcement by the Company of the subscription offer, the stock was selling at $50⅜ per share and closed at $50 per share. On Monday, April 20th, the stock closed on the NYSE at $45 per share rights on, opened Tuesday morning, April 21st $43 x rights, and closed 41¾-42, last sale 41¾ x rights.

| | |
|---|---|
| Public Offering Date: | After close April 21, 1953. |
| Public Offering Price: | 41.75 |
| Gross Spread: | 1.50 (15¢ per right). |
| Selling Concession: | 1.10. |
| Management Fee: | 15¢ (.015 cents per right). |
| Reallowance: | .25. |
| Estimated Expenses: | 18. |
| Payment & Delivery: | April 28, 1953—New York. |

Trading Restrictions Removed—Close of business April 22, 1953. On April 22nd, the stock sold as high as $43 and closed at 42¼.

The indicated interest on the morning of the offering date was light, but as the market declined, the interest increased and by 3:30 p.m., there were more requests for stock than was available in the Selling Group. When the offering price was announced there was a heavy demand for

the stock, with subscriptions of over 50,000 shares in excess of the amount available.

The First Boston Corporation had an underwriting commitment of 19,722 shares of which 3977 shares were given up for dealer sales, the remaining 15,745 shares being taken down for its own retail sales.

As manager, the FBC sold 69,173 shares to 85 dealers and underwriters on Selling Group terms, acquiring a short position of 21,677 shares. This short position was covered through the purchase of 7,000 shares of stock at 41¾-$1.30 and 500 shares at 42½ + commission, and the remaining short position of 7177 shares was covered through the purchase of Rights at prices ranging from 1 2/32 to 26/32. [fol. 3184] The following were offered underwriting positions but declined:

| | |
|---|---|
| Goodbody & Co. | 1,000 shares |
| Mitchum, Tully & Co. | 750 |
| Stephenson, Leydecker & Co. | 500 |
| Westhimer & Co. | 750 |
| H. Hentz & Co. | 500 |

For complete details of the offering, see the Performance Record.

8/10/53

[fol. 3185] GOVERNMENT TRIAL EXHIBIT No. 276

40,000 shares

ALUMINIUM LIMITED

Capital Stock—No Par Value

| | |
|---|---|
| Negotiated Secondary | |
| Vendor: | Estate Walker P. Inman |
| Buying Officer: | Mr. Ladd |
| Managers: | Frist Boston Corporation — Interest: 50% |
| | Kuhn, Loeb & Co. |
| | 20,000 shares |
| FBC Interest: | |
| Public Offering Date: | November 9, 1954—close |
| Offering Terms: | $69.00—(69 3/8 at time of announcement—closed 68 7/8–69 1/8) |
| Purchase Price: | $67.10 |
| Gross Spread: | 1.90 |
| Management Fee: | none |
| Selling Concession | 1.25 |
| Underwriting Profit: | .65 Less expenses |
| Settlement Date: | November 16, 1954—close |
| Stabilization: | none |
| Subscription book closed: | November 9, 1954—4:15 |

The managers acted as the Sellers Agent. The First Boston Corporation sold 15,010 shares and Kuhn, Loeb & Co. sold 2,00 shares.

A total of 24,235 shares were allotted to 102 dealers on subscription totaling approximately 60,000 shares. The overallotment of 1,245 shares was covered through purchases on the N.Y.S.E. at prices ranging from 69 to 69 5/8 (plus commission)

December 4, 1954

This offering was one of several blocks, which the FBC and Kuhn, Loeb & Co. sold for the estate. Messrs. Stuart L. Hawkins, Philip B. Heartt and Thomas L. Perkins, Executors of the estate and all affiliated with the Duke Interest contacted the FBC and Kuhn, Loeb & Co. to dispose of the securities—recommending that each firm receive 50% of the net profits.

[fol. 3186] GOVERNMENT TRIAL EXHIBIT NO. 277

904,314 Shares

ALUMINIUM LIMITED

Capital Stock Without Nominal or Par Value

| | |
|---|---|
| Subscription Offer: | To holders of outstanding shares of record January 7, 1955 at the rate of one share for each ten shares held. |
| Subscription Price: | Canadian Dollars:— $46.00<br>U. S. Dollars:— 47.60 |
| Warrants Expired: | January 31, 1955 (3:30 PM., EST) |

Subscriptions were received for 902,312 shares (99.78%). The Company made no offering of the Unsubscribed Shares.

There was no underwriting of the Subscription Offer.

| | |
|---|---|
| Dealer Managers: | United States—The First Boston Corporation<br>Morgan Stanley & Co.<br>White, Weld & Co.<br>Canada— A. E. Ames & Co. Ltd. |
| Soliciting Dealers Compensation: | 39 cents per share with a maximum of $390.00 (Canadian or U. S.) to any dealer with respect to any single holder of Warrants. |
| Dealer Managers Compensation: | $90,000,000 (Canadian)<br>The First Boston Corporation —35%<br>A. E. Ames & Co., Ltd —25%<br>Morgna Stanley & Co. —20%<br>White, Weld & Co. —20% |

Soliciting dealer fees in the amount of $110,820.06 covering 335,252 shares were paid to 397 dealers. The FBC received $16,706.82 from customers subscriptions and $8,019.18 from rights purchased to cover short sales made during the subscription period. Soliciting dealer Agreements were sent to 914 dealers on January 10, 1955 and to 141 additional dealers during the standby period. Signed Agreements were received from 550 dealers.

[fol. 3187] Prior to the offering a dealer meeting was held in New York City. There were no other meetings.

The FBC formed an underwriting group of 123 dealers to purchase a maximum of 2,012,738 rights (201,273 shares) which might be sold by certain stockholders,—A. E. Ames would underwrite 25% of the offering which would be offered in Canada. Ames would pay the FBC the same management fee as the other underwriters.

Although Morgan Stanley and White, Weld were not co-managers on the secondary offering their names appeared in the advertisement of the secondary offering.

The stock closed Friday, January 7, 1955, at 76⅜. The agreements were signed Monday, January 10th, at 9:15 A.M. On this day, the stock opened at 77 and sold during the day

at 77⅜-77⅝-78, with the last sale at the close being 78⅜. All prices quoted above were "with rights".

At 3:30 PM on January 10th, the secondary offering was made in the amount of 200,538 shares with the following terms, etc:—

| | |
|---|---|
| FBC Interest: | 20,534 shares (10.239%) |
| Vendors: | See Performance Record |
| Public Offering Price: | $75.50 (x rites) |
| Purchase Price: | $73.35. ($2.575 per right) |
| Gross Spread: | 2.15 |
| Management Fee: | .3225 (15% gross) |
| Selling Concession: | 1.25 |
| Reallowance: | .40 |
| Subscription Books Closed: | January 10, 1955—close |
| Trading Restrictions Removed: | January 11, 1955—close |
| Payment & Delivery: | January 14, 1955—New York |

Prior to the offering, subscriptions were received from Underwriters and other dealers for 307,100 shares.

The representative retained 21,999 shares and sold 24,398 shares to 45 dealers (including 8 underwriters). The short position of 2,399 shares was covered thru the purchase of 900 shares at 75½ + commission; 14,900 rites at 2 13/16 and 90 rites at 2 11/16.

On January 11 and 12th, the representative, as Dealer Manager, sold, 5,568 shares at 76½ less 1 and purchased 55,680 rights at prices ranging from 2 11/16 to 2 13/16.

[fol. 3188] The FBC had an underwriting commitment of 20,354 shares, of which 9,350 shares were given up for sales to Dealers and the remaining 11,004 shares were sold to retail customer.

During the standby period, the FBC had the following transactions as a Soliciting Dealer:—

| | |
|---|---|
| Total rights purchased | 197,430 rts. |
| Total shares taken-down from Dealer Manager | 368 shs. |
| Shares purchased to cover short position | 5 shs. |
| Total shares sold | 20,116 shs. |

2/10/55
WRC/HHH

[fol. 3189] GOVERNMENT TRIAL EXHIBIT NO. 280

178,100 Shares

ALUMINIUM LIMITED

Capital Stock Without Nominal or Par Value

| | |
|---|---|
| Negotiated Secondary: | |
| Buying Officer: | Mr. Townsend |
| Vendors: | See attached |
| Manager: | The First Boston Corporation |
| FBC Interest: | 18,350 shares—10.30% |
| Public Offering Date: | July 26, 1955—3:30 p.m. |
| Offering Terms: | $103.75 (ex-dividend) |
| | The stock closed 103 1/2—105 |
| | Last sale 103 3/4—all ex-dividend |
| Concession: | $1.75—Reallowance 50¢ |
| Purchase Price: | $100.80 |
| Gross Spread: | 2.95 (2.84% of offering price) |
| Management Fee: | .4425 (15% of gross spread) |
| Underwriting Profit: | .7575 (less expenses) |
| Payment & Delivery: | August 1, 1955—Pittsburgh, Pa. |
| Subscription Books Closed: | July 26, —4:00 p. m. |
| Trading Restrictions Removed: | July 27, 1955—10:40 a. m. |
| | Market opened 7/28—105 |

The offering was oversubscribed. A. E. Ames & Co., Ltd. underwrote 44,000 shares (approximately 25%) and formed their own group in Canada to distribute the stock. Ames was given no special consideration and paid a management fee on their participation. The group was formed from the group that underwrote 200,538 shares in January 1955 with approximately the same percentage in this deal.

The representative retained 45,124 shares and sold 53,050 shares to 61 dealers in the selling group, (including 29,230 shares to 14 underwriters). Subscriptions were received from selling group dealers in the amount of 33,555 shares (allotted 23,820 shares). The 7926 share short position was covered through purchases on the NYSE at prices ranging from 105½ to 103¼.

[fol. 3190] The FBC had an underwriting commitment of 18,350 shares, of which 226 shares were sold to retail customers and the remaining 18,124 shares were given up for sales to dealers.

For complete details of the offering, see the Performance Record.

[fol. 3191] GOVERNMENT TRIAL EXHIBIT No. 282

Aluminium Limited

On March 13, 1956, The First Boston Corporation announced that subject to market conditions we planned to offer—158,280 shares of Aluminium Ltd, Capital Stock after the close of the N.Y.S.E. with a concession of approximately $1.50 per share.

The stock closed on March 12th at 123⅞ (up 3⅞) and on March 13th opened at 123 and closed at 118 (off 5⅞).

At 3:30 P.M. we announced that the offering would not be made. A total of 133 dealers had indicated an interest of approximately 95,000 shares at this time.

The stock opened March 14th at 120.

3/14/56

[fol. 3192] GOVERNMENT TRIAL EXHIBIT No. 283

109,000 Shares

ALUMINIUM LIMITED

Capital Stock Without Par Value

| | |
|---|---|
| Negotiated Deal: | |
| Vendor: | Roy A. Hunt |
| Buying Officer: | Mr. E. H. Ladd, 3d |
| Managers: | The First Boston Corporation |
| FBC Interest: | 100% (acted as Agent) |
| Public Offering Date: | March 20, 1956—3:30 P. M. |
| Offering Terms: | $121.00 (Market 121—121 1/4, last sale 121)<br>Concession $1.50—Reallowance none |
| Purchase Price: | $119.00 |
| Gross Spread: | 2.00 (1.65% of offering price) |
| Underwriting Profit: | .50 less expenses |
| Settlement Date: | March 26, 1956—Pittsburgh |
| Stabilization: | None |
| Subscription Book Closed: | March 20, 1956—4:30 P. M. |

The stock was sold as follows—

104,128 shares were sold to 163 dealers
7,000 shares were sold to 20 dealers a/c directed order
3,510 shares were sold to retail customers

114,638 shares

The First Boston Corporation acted as sellers agent on 109,000 shares and the short position was covered through the purchase of 4,500 shares on the N.Y.S.E. at prices ranging from 119¾ to 120¾ and the remaining 1,128 shares were purchased from Mr. Hunt at $119 per share.

See Performance Record for Complete Details of the Offering.

4/13/56

[fol. 3193] GOVERNMENT TRIAL EXHIBIT No. 284

46,900 Shares

ALUMINIUM LIMITED

Capital Stock Without Par Value

| | |
|---|---|
| Negotiated Secondary: | 44,000 shares as Agent<br>2,900 shares as Principal |
| Vendor: | Roy A. Hunt |
| Buying Officer: | Mr. E. H. Ladd, 3d |
| Managers: | The First Boston Corporation |
| FBC Interest: | 100%. |
| Public Offering Date: | April 3, 1956 (after close NYSE) |
| Offering Tems: | $121.25 (market closed 121—121 1/2, last sale 121 1/4)<br>Concession $1.50—Reallowance-none set |
| Purchase Price: | $119.25 |
| Gross Spread: | 2.00 |
| Settlement Date: | April 9, 1956—Pittsburgh |
| Stabilization: | none |

The notice of the intended offering appeared on the Dow Jones tape at 12:26 PM.

The offering price was announced at 3:35 PM and the subscription books were immediately closed.

A total of 41,950 shares were confirmed to 111 dealers and the FBC sold 4,955 shares to retail customers.

The First Boston Corporation acted as agent on 44,000 shares and as Principal on 2,900 shares. The over-sale of 5 shares was covered through a purchase on the NYSE on April 4, 1956 at 122.

5/11/56

GOVERNMENT TRIAL EXHIBIT No. 322

COMPARISON OF YIELDS ON GENERAL MOTORS COMMON STOCK WITH STANDARD & POOR'S Composite COMMON STOCK YIELDS
QUARTERLY, FIRST QUARTER 1946 - FIRST QUARTER 1958

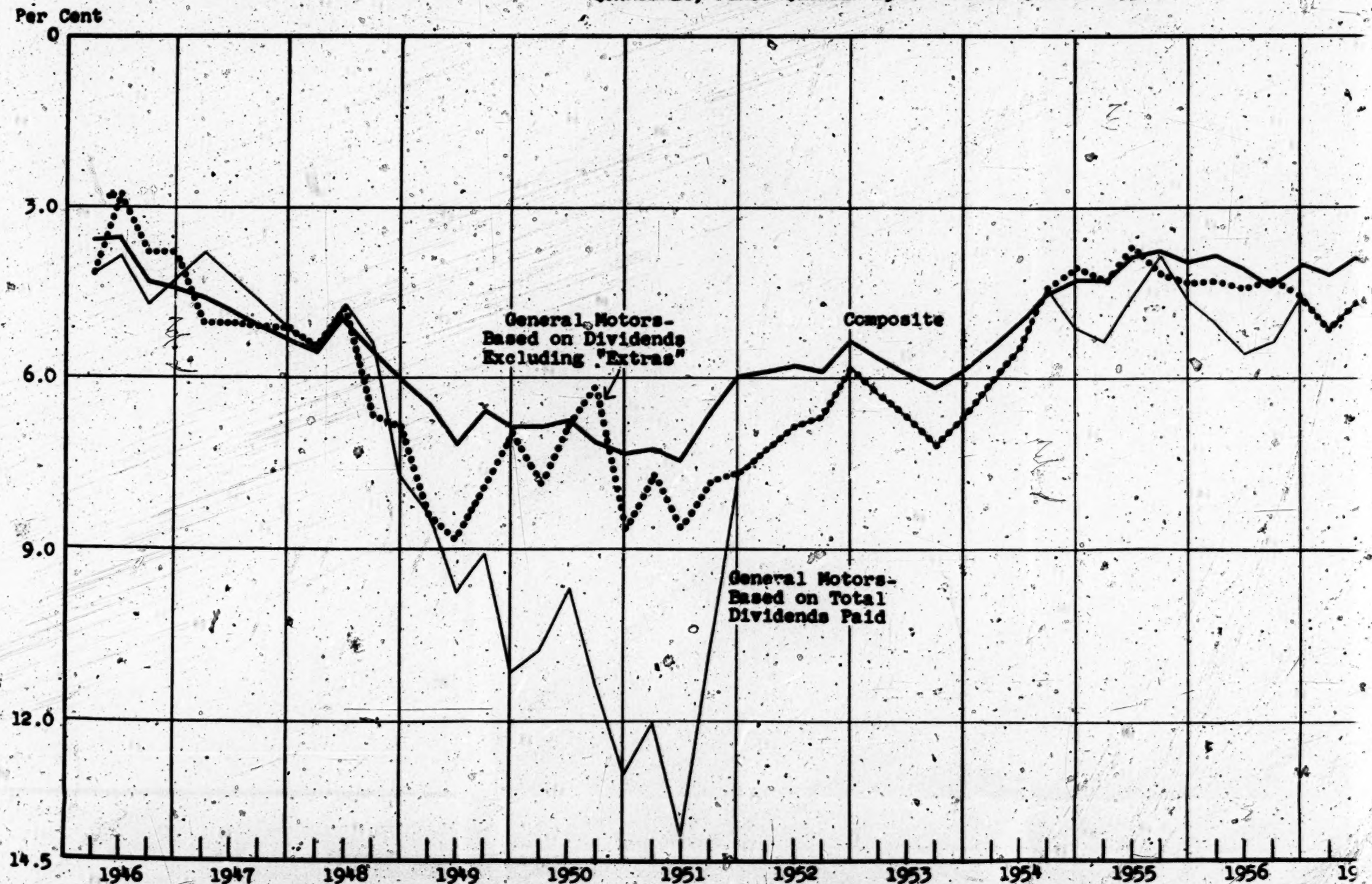



Exhibit 299 and 323

Source: ~~Schedules 2 and 15.~~

[fol. 3194] GOVERNMENT TRIAL EXHIBIT NO. 285

204,490 Shares

ALUMINIUM LIMITED

Capital Stock (Without Nominal or Par Value)

Negotiated Non-Registered: Secondary
Buying Officer: Mr. E. H. Ladd

| Vendors: | Sold as Agent | Sold as Principal |
|---|---|---|
| Richard K. Mellon F. | 25,000 shares | |
| Old Dominion Fndn. | 70,000 | 5,000 shares |
| Bollinger Fndn. | 36,990 | |
| Avalon Foundation | 62,500 | 5,000 shares |
| | 194,490 shares | 10,000 shares |

| | |
|---|---|
| Manager: | The First Boston Corporation |
| FBC Interest: | 100% |
| Offering Date: | May 14, 1957—after close of NYSE |
| Offering Terms: | $45.50 (Market 45 3/8—5/8: Last Sale 45 1/2) Concession 95¢—Reallowance 25¢ |
| Purchase Price: | 44.30 |
| Gross Spread: | 44.30 |
| Gross Spread: | 1.20 (2.64% of Offering Price) |
| Underwriting Profit: | .25 less expenses |
| Payment & Delivery: | May 24, 1957—Pittsburgh |
| Stabilization: | None |
| Subscription Book Closed: | May 14, 1957—4:15 p. m. |

The offering was oversubscribed. The FBC sold 200,118 shares to 182 dealers and 5,962 shares to retail customers.

The short position of 1,590 shares was covered at prices ranging from 45⅛ to 45⅜.

HHH

[fol. 3195] GOVERNMENT TRIAL EXHIBIT No. 286

300,600 Shares

ALUMINIUM LIMITED

Capital Stock Without Nominal or Par Value

| | |
|---|---|
| Negotiated Non-registered: | Secondary |
| Buying Officer: | Mr. Townsend |
| Vendor: | Old Dominion Foundation |
| Managers: | The First Boston Corporation |
| FBC Interest: | [illegible]00 Shares—15 1/2% |
| Offering Date: | May 26, 1958—After close NYSE |
| Offering Terms: | $27.00—stock closed 26 7/8—27 last sale 27<br>Concession 70 cts. Reallowance 25 cts. |
| Purchase Price: | $25.90 |
| Gross Spread: | $1.10 (4.07% of Offering Price) |
| Management Fee: | .165 (15% of Gross Spread) |
| Underwriting Profit: | .235 less expenses |
| Delivery: | June 2, 1958—New York |
| Stabilization: | None |
| Subscriptions Book Closed: | May 26, 1958—4:30 PM |
| Underwriters Trading Restrictions Removed: | May 27, 1958—1:43 PM |
| Public Advertising: | Market: $27.00<br>The First Boston Corporation only name. |

The agreement among purchasers was signed at 2 PM on May 26, specified a minimum spread of $1.05 and gave the representative seven full business days in which to make the offering.

The offering was oversubscribed. The representative retained 127,017 shares and sold 54,760 shares to 161 dealers and 82,076 shares to 23 underwriters. The short positions of 9,819 shares was covered at prices ranging from 26⅞ to 27⅝.

The FBC had an underwriting commitment of 46,500 shares of which 31,642 shares were given up for sale to dealers and the remaining 14,858 shares were retained and sold to retail customers.

[fol. 3196] GOVERNMENT TRIAL EXHIBIT No. 288

235,156 Shares

ALUMINIUM LIMITED

Capital Stock Without Nominal or Par Value

| | |
|---|---|
| Offering Date: | October 30, 1958 |
| Negotiated Non-Registered | Secondary |
| Buying Officer: | Mr. Edw. P. Lebens |
| Vendor: | Sarah Mellon Scaife |
| Managers: | The First Boston Corporation |
| FBC Interest: | 41,956 Shares (17.84%) |
| Offering Terms: | $33.375—(Market up 59¢ for the day) |
| | Volume: 4,360,000 shs |
| | ALI: open: $34.25 |
| | high: 34.375 |
| | low: 33.25 |
| | close: 33.375 |
| | volume: 27,500 shs |
| | Concession: 75¢ — Reallowance: 25¢ |
| Purchase Price: | $32.20 |
| Gross Spread: | $1.175 (3.52% of offer price) |
| Management Fee: | .18 (15.32% of gross) |
| Underwriting Profit: | .245 less expenses |
| Stabilization: | None |
| Delivery: | November 6, 1958—New York |
| Subscription Book Closed: | October 30, 1958—4:08 P.M. |
| Trading restrictions removed: | November 5, 1958—10:12 A. M. Market: 32.75 |
| Public Advertising: | The First Boston Corporation—only name |

The basic retention by Underwriers was 75%, leaving 58,789 shares for the selling group. The notice of the intended secondary appeared on the Dow Jones tape at 12:07 p.m. and by 1:00 p.m. the book was so large, we stopped taking dealer subscriptions.

[fol. 3197] Subscriptions were received from selling group dealers for 159,704 shares and after adjustments of underwriters retentions there were 78,907 shares in the pot.

The representative allotted 46,624 shares to 141 dealers, and 43,075 shares to 29 Underwriters in the selling group.

The short position of 10,792 shares was covered at prices ranging from 32¾ to 33⅜.

The First Boston Corporation had an underwriting commitment of 41,956 shares, of which, 30,194 shares were given up for sale to dealers and the remaining 11,762 shares were retained and sold to retail customers.

For complete details of the offering see:

HHH

## Performance Record

Re: Underwriting Group Comments on Formation

Declinded offering:
4,300 shares—Eastman Dillon, Union Securities & Co.
1,900 shares—Coffin & Burr, Inc.—had an order to sell block of stock and felt could not accept u/w position, do not want to be penalized on future offerings.

---

Hulme, Applegate & Humphrey: had declined previous deal and were not invited into this business, want to be in future financing.
Dominick & Dominick: request their name be given serious consideration in future offerings.

WRC

[fol. 3198]

GOVERNMENT TRIAL EXHIBIT No. 293

Offerings of Common Stock (of Industrial Corporations) in Amounts of $25 Million and Over During the Seven Year Period 1951-1957

(1) Percentage Changes in Market Price of Stock (As Indicated by Monthly Closing Prices) From Three Months Prior to Month-of-Offering to Twelve Months Subsequent to Month-of-Offering.
(2) Percentage Changes in Standard & Poor's Stock Price Index for Industrials (As Indicated by Monthly Closing Figure) From Three Months Prior to Month-of-Offering to Twelve Months Subsequent to Month-of-Offering.
(3) With Reference to New Issues, the Per Cent Increase in Stock Outstanding, and with Reference to Secondary Distributions, the Per Cent of Stock Outstanding.

(Excluded from this compilation are offerings of common stock which are new to the public and for which stock exchange prices are not available for the three-month period prior to the month-of-offering.)

| Company | Offering Date | Amount | Per Cent Increase in Stock | Percentage Change (1) Stock | (1) Index | (2) Stock | (2) Index | (3) Stock | (3) Index | (4) Stock | (4) Index | (5) Stock | (5) Index |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **New Issues Offered Through Subscription Rights** | | | | | | | | | | | | | |
| Armco Steel Corp. | 2-27-51 | $ 33,609,217 | 20.00 | + 3.98 | + 4.31 | + 8.20 | + 6.22 | - 4.55 | + 0.69 | - 8.73 | - 1.59 | -14.78 | + 8.44[1] |
| American Tobacco Co. | 3- 5-52 | 55,935,620 | 20.00 | + 5.02 | + 1.20 | - 7.26 | - 4.32 | - 3.09 | + 4.99 | - 3.62 | - 4.59 | +21.85 | + 8.21[2] |
| American Can Co. | 5- 8-52 | 25,976,974 | 10.00 | + 9.96 | + 4.99 | - 3.66 | - 4.59 | - 3.60 | + 2.34 | +13.69 | + 5.36 | + 1.09 | - 2.76 |
| Socony-Vacuum Co., Inc. | 9-25-52 | 98,585,828 | 10.00 | - 2.88 | + 1.85 | - 2.96 | - 1.94 | - 8.81 | - 2.17 | + 2.60 | - 0.12 | - 6.16 | - 5.74 |
| Aluminium Ltd. | 4-24-53 | 27,826,151 | 10.00 | - 5.60 | - 1.92 | - 1.48 | - 2.57 | - 9.78 | - 2.60 | + 1.11 | - 0.53 | +25.82 | +16.51 |
| Aluminium Ltd. | 1-10-55 | 43,645,346 | 10.00 | +12.11 | + 8.35 | + 8.36 | + 5.11 | - 5.11 | + 2.01 | + 9.74 | - 0.26 | +20.12 | +22.57 |
| General Motors Corp. | 2- 8-55 | 328,551,225 | 5.00 | + 6.82 | + 5.11 | + 0.89 | + 2.01 | - 4.56 | - 0.26 | - 0.80 | - 0.34 | +44.79 | +27.73 |
| The Goodyear Tire & Rubber Co. | 7-21-55 | 45,676,550 | 10.00 | + 5.26 | + 0.02 | - 3.40 | + 9.53 | - 6.42 | + 6.65 | + 6.19 | - 0.92 | +32.29 | +16.40 |
| Sperry Rand | 7- 9-56 | 52,702,343 | 10.00 | + 7.11 | - 7.09 | (None) | + 4.32 | + 9.18 | + 5.32 | - 4.67 | - 3.80 | - 3.43 | + 1.99 |
| North American Aviation Inc. | 9- 7-56 | 43,310,418 | 16.67 | + 0.56 | + 5.32 | + 0.28 | - 3.80 | - 8.29 | - 4.66 | + 3.31 | + 0.49 | -47.81 | - 6.07[3] |
| Johns-Manville Corp. | 10- 1-56 | 25,947,840 | 10.00 | - 0.67 | - 3.80 | -11.51 | - 4.66 | - 6.12 | + 0.49 | + 0.54 | + 1.21 | -14.33 | - 8.14 |
| Armco Steel Corp. | 1-10-57 | 60,938,024 | 10.00 | + 3.13 | - 1.21 | - 2.27 | + 4.01 | -11.63 | - 5.13 | - 3.51 | - 3.47 | -16.36 | - 2.88 |
| Socony Mobil Oil Co. | 1-30-57 | 199,278,989 | 10.00 | - 0.72 | - 1.21 | + 6.54 | + 4.01 | - 6.82 | - 5.13 | - 0.49 | - 3.47 | - 3.43 | - 2.88 |
| Anaconda Co. | 2-14-57 | 86,743,250 | 20.00 | - 1.87 | + 4.01 | - 5.38 | - 5.13 | -11.38 | - 3.47 | + 4.76 | + 2.44 | -36.17 | - 7.41[4] |
| International Business Machines Corp. | 5-21-57 | 231,049,060 | 10.00 | + 2.16 | + 2.44 | +10.11 | + 3.98 | + 2.97 | + 4.38 | +12.39 | + 0.43 | + 5.36 | - 8.40 |
| Minneapolis-Honeywell Regulator Co. | 7-16-57 | 28,155,145 | 5.00 | + 5.07 | + 4.38 | + 8.12 | + 0.43 | + 3.76 | + 1.31 | -13.46 | - 5.80 | + 1.44 | + 3.09 |
| Standard Oil Co. (New Jersey) | 11- 8-57 | 288,161,456 | 3.33 | -11.05 | - 6.32 | - 4.88 | - 3.39 | - 3.96 | + 1.56 | - 3.16 | - 4.59 | +18.05 | +30.75 |
| Total | | | 190.00 | +24.17 | +20.43 | - 0.30 | + 9.22 | -74.07 | + 6.32 | +15.89 | -19.55 | +28.34 | +91.38 |
| Average | | | 11.18 | + 1.42 | + 1.20 | - 0.02 | + 0.54 | - 4.36 | + 0.37 | + 0.93 | - 1.15 | + 1.67 | + 5.38 |
| American Telephone & Telegraph Co. (Included for purposes of this table) | 9-14-56 | 572,615,200 | 10.00 | + 2.57 | + 5.32 | - 1.02 | - 3.80 | - 7.46 | - 4.66 | - 1.70 | + 0.49 | + 1.13 | - 6.07 |
| **New Issues Offered to the Public** | | | | | | | | | | | | | |
| Jones & Laughlin Steel Corp. | 3-28-51 | 25,250,000 | 19.23 | +22.00 | + 6.22 | - 9.02 | + 0.69 | - 7.21 | - 1.59 | + 3.88 | + 5.59 | -12.15 | + 7.79[5] |
| Monsanto Chemical Co. | 2- 4-52 | 39,200,000 | 8.22 | +19.83 | + 4.12 | - 3.19 | + 1.20 | - 7.94 | - 4.32 | + 1.33 | + 4.99 | - 4.71 | + 5.97 |
| Caterpillar Tractor Co. | 4- 2-56 | 34,375,000 | 5.98 | +13.50 | + 3.85 | - 0.37 | + 7.32 | + 7.46 | + 0.08 | + 4.17 | - 7.06 | +20.83 | + 1.50 |
| Halliburton Oil Well Cementing Co. | 6-20-56 | 27,562,500 | 10.67 | +10.74 | + 0.08 | + 0.33 | - 7.09 | + 5.17 | + 4.32 | + 8.40 | + 5.32 | -14.91 | - 3.16 |
| Total | | | 44.10 | +66.07 | +14.27 | -12.25 | + 2.12 | - 2.52 | - 1.51 | +17.78 | + 8.81 | -10.94 | +12.10 |
| Average | | | 11.03 | +16.52 | + 3.57 | - 3.06 | + 0.53 | - 0.63 | - 0.38 | + 4.45 | + 2.20 | - 2.74 | + 3.03 |
| **Secondary Distribution** | | | | | | | | | | | | | |
| Aluminium Ltd. | 2-27-51 | 30,303,000 | 8.94 | +20.94 | + 4.31 | - 0.26 | + 6.22 | - 5.18 | + 0.69 | - 4.92 | - 1.59 | +28.74 | + 5.59 |
| International Harvester Co. | 3- 9-54 | 28,600,000 | 7.48 | +12.50 | + 5.43 | + 2.06 | + 0.15 | - 5.24 | + 3.39 | + 5.96 | + 5.78 | +17.27 | +31.48 |
| Republic Steel Corp. | 12- 6-54 | 29,497,525 | 5.93 | - 1.00 | - 1.74 | +10.53 | + 8.35 | +24.36 | + 5.11 | - 3.98 | + 2.01 | +19.33 | +27.51 |
| Corning Glass Works | 3-29-55 | 27,301,125 | 6.99 | + 3.03 | + 2.01 | - 5.64 | - 0.26 | + 1.95 | - 0.34 | + 7.64 | + 3.92 | +30.97 | +31.91 |
| General Motors Corp. | 4-30-56 | 55,948,944 | 00.46 | + 4.64 | + 3.85 | + 3.05 | + 7.32 | - 5.65 | + 0.08 | - 4.84 | - 7.09 | + 2.10 | + 1.50 |
| Rohm & Haas | 6-20-56 | 34,853,720 | 7.83 | - 2.86 | + 0.08 | - 2.62 | - 7.09 | - 2.07 | + 4.32 | + 4.41 | + 5.32 | -12.94 | - 3.16 |
| The Texas Co. | 6-26-56 | 27,306,250 | 0.77 | + 4.20 | + 0.08 | - 9.94 | - 7.09 | + 2.58 | + 4.32 | + 2.13 | + 5.32 | + 8.54 | - 3.16 |
| Texas Gulf Sulphur Co. | 4- 8-57 | 34,671,916 | 11.98 | + 1.24 | - 3.47 | - 0.82 | + 2.24 | - 4.53 | + 3.98 | - 6.04 | + 4.38 | -31.65 | - 9.36[6] |
| Total | | | 50.38 | +42.69 | +10.55 | - 3.64 | + 9.84 | + 6.22 | +21.55 | + 6.36 | +18.05 | +62.36 | +82.31 |
| Average | | | 6.30 | + 5.34 | + 1.32 | - 0.46 | + 1.23 | + 0.78 | + 2.69 | + 0.05 | + 2.26 | + 7.80 | +10.29 |

Explanatory Notes

With reference to figures listed under the general heading of "Percentage Change";

[1] From February 1951 to February 1952, Standard & Poor's Index for 11

[fol. 3199] GOVERNMENT TRIAL EXHIBIT NO. 316

Domestic Passenger Cars Produced,
Total United States and Chrysler Corporation
Quarterly, 1952 through 1954

| Year | Passenger Cars Produced | | |
|---|---|---|---|
| | Chrysler Corp. (1) | Total United States (2) | Chrysler as a Per Cent of Total (3) |
| 1952 | | | |
| 1st quarter | 229,420 | 992,403 | 23.12% |
| 2nd quarter | 264,778 | 1,202,795 | 22.01 |
| 3rd quarter | 160,580 | 838,168 | 19.16 |
| 4th quarter | 297,813 | 1,304,077 | 22.84 |
| 1953 | | | |
| 1st quarter | 335,253 | 1,520,111 | 22.05% |
| 2nd quarter | 363,359 | 1,735,899 | 20.93 |
| 3rd quarter | 258,775 | 1,587,544 | 16.30 |
| 4th quarter | 289,215 | 1,291,269 | 22.40 |
| 1954 | | | |
| 1st quarter | 182,641 | 1,426,000 | 12.81% |
| 2nd quarter | 196,140 | 1,532,519 | 12.80 |
| 3rd quarter | 82,172 | 1,164,092 | 7.06 |
| 4th quarter | 262,300 | 1,386,026 | 18.92 |

Source: Slocum Publishing Co., Inc., *Automotive News Almanac.*

[fol. 3200]

GOVERNMENT TRIAL EXHIBIT NO. 318

General Motors Common Stock Closing Prices, Actual and Adjusted for Stock Splits
Monthly, January 1946-May 1958

| | 1946 | 1947 | 1948 | 1949 | 1950 | 1951 | 1952 | 1953 | 1954 | 1955 | 195 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | Actual[1] | | | | | |
| January | $ 79.875 | $ 59.375 | $ 55.625 | $ 60.750 | $ 73.250 | $ 49.875 | $ 51.125 | $ 68.000 | $ 63.125 | $ 98.750 | $ 43.1 |
| February | 78.500 | 60.375 | 52.125 | 57.500 | 75.375 | 50.250 | 50.625 | 66.250 | 63.250 | 94.250 | 45.1 |
| March | 72.000 | 59.125 | 54.750 | 59.500 | 76.500 | 51.875 | 55.125 | 63.125 | 65.625 | 93.500 | 46.5 |
| April | 73.625 | 57.875 | 55.500 | 57.500 | 85.750 | 53.625 | 53.625 | 62.250 | 69.875 | 98.500 | 43.8 |
| May | 75.000 | 55.625 | 63.250 | 55.000 | 90.375 | 49.625 | 54.875 | 61.500 | 71.625 | 96.875 | 41.7 |
| June | 71.125 | 59.000 | 63.750 | 56.250 | 87.500 | 46.375 | 58.375 | 59.875 | 72.750 | 109.125 | 45.0 |
| July | 68.375 | 60.625 | 62.000 | 61.875 | 85.250 | 47.500 | 59.875 | 60.375 | 82.000 | 136.625 | 47.1 |
| August | 61.125 | 59.375 | 62.375 | 61.875 | 89.875 | 50.000 | 60.250 | 55.750 | 77.500 | 127.875 | 47.1 |
| September | 52.750 | 58.875 | 60.250 | 63.000 | 49.125[2] | 51.250 | 59.625 | 55.750 | 90.500 | 47.750[3] | 46.5 |
| October | 51.250 | 59.625 | 65.125 | 67.625 | 50.125 | 50.250 | 60.750 | 60.500 | 89.875 | 45.000[3] | 45.7 |
| November | 49.875 | 57.500 | 56.125 | 66.375 | 46.250 | 50.375 | 64.250 | 59.875 | 91.625 | 48.500 | 43.5 |
| December | 52.500 | 58.250 | 58.750 | 71.625 | 46.250 | 52.000 | 68.875 | 59.625 | 97.875 | 46.250 | 44.0 |
| | | | | | | Adjusted[4] | | | | | |
| January | $ 13.312 | $ 9.896 | $ 9.271 | $ 10.125 | $ 12.208 | $ 16.625 | $ 17.042 | $ 22.667 | $ 21.042 | $ 32.917 | $ 43.1 |
| February | 12.083 | 10.062 | 8.688 | 9.583 | 12.562 | 16.750 | 16.875 | 22.083 | 21.083 | 31.417 | 45.1 |
| March | 12.000 | 9.854 | 9.125 | 9.917 | 12.750 | 17.292 | 18.375 | 21.042 | 21.875 | 31.167 | 46.5 |
| April | 12.271 | 9.646 | 9.250 | 9.583 | 14.292 | 17.875 | 17.875 | 20.750 | 23.292 | 32.833 | 43.8 |
| May | 12.500 | 9.271 | 10.542 | 9.167 | 15.062 | 16.542 | 18.292 | 20.500 | 23.875 | 32.292 | 41.7 |
| June | 11.854 | 9.833 | 10.625 | 9.375 | 14.583 | 15.458 | 19.458 | 19.958 | 24.250 | 36.375 | 45.0 |
| July | 11.396 | 10.104 | 10.333 | 10.312 | 14.208 | 15.833 | 19.958 | 20.125 | 27.333 | 45.542 | 47.1 |
| August | 10.188 | 9.896 | 10.396 | 10.312 | 14.979 | 16.667 | 20.083 | 18.583 | 25.833 | 42.625 | 47.1 |
| September | 8.792 | 9.812 | 10.042 | 10.500 | 16.375 | 17.083 | 19.875 | 18.583 | 30.167 | 47.750 | 46.5 |
| October | 8.542 | 9.938 | 10.854 | 11.271 | 16.708 | 16.750 | 20.250 | 20.167 | 29.958 | 45.000 | 45.7 |
| November | 8.312 | 9.583 | 9.354 | 11.062 | 15.417 | 16.792 | 21.417 | 19.958 | 30.542 | 48.500 | 43.5 |
| December | 8.750 | 9.708 | 9.792 | 11.938 | 15.417 | 17.333 | 22.958 | 19.875 | 32.625 | 46.250 | 44.0 |

[1] New York Stock Exchange closing prices as of last trading day of month.

[2] 2-for-1 split of $10 par common stock effective October 2, 1950. Closing price of $10 par stock traded for September 1950 was $98.000.

[3] 3-for-1 split of $5 par common stock effective September 30, 1955. Closing prices of $5 par stock traded for September and October 1955 were $142.500 and $134.625, respectively.

[4] Data adjusted for splits by dividing actual prices for January 1946-August 1950 by 6 and for September 1950-August 1955 by 3.

Source: William B. Dana Company, Bank and Quotation Record, monthly issues, 1946-1958.

SCHEDULE 11

)d for Stock Splits

| ) | 1954 | 1955 | 1956 | 1957 | 1958 |
|---|---|---|---|---|---|
| )0 | $ 63.125 | $ 98.750 | $ 43.125 | $ 40.375 | $ 34.750 |
| 50 | 63.250 | 94.250 | 45.125 | 39.000 | 34.000 |
| 25 | 65.625 | 93.500 | 46.500 | 38.875 | 35.125 |
| 50 | 69.875 | 98.500 | 43.875 | 42.625 | 37.500 |
| )0 | 71.625 | 96.875 | 41.750 | 42.750 | 38.875 |
| 75 | 72.750 | 109.125 | 45.000 | 43.000 | |
| 75 | 82.000 | 136.625 | 47.125 | 45.000 | |
| 50 | 77.500 | 127.875 | 47.125 | 43.250 | |
| 50 | 90.500 | 47.750[a] | 46.500 | 40.125 | |
| )0 | 89.875 | 45.000[a] | 45.750 | 38.875 | |
| 75 | 91.625 | 48.500 | 43.500 | 35.875 | |
| 25 | 97.875 | 46.250 | 44.000 | 33.500 | |

| 57 | $ 21.042 | $ 32.917 | $ 43.125 | $ 40.375 | $ 34.750 |
|---|---|---|---|---|---|
| 33 | 21.083 | 31.417 | 45.125 | 39.000 | 34.000 |
| 12 | 21.875 | 31.167 | 46.500 | 38.875 | 35.125 |
| 50 | 23.292 | 32.833 | 43.875 | 42.625 | 37.500 |
| )0 | 23.875 | 32.292 | 41.750 | 42.750 | 38.875 |
| 38 | 24.250 | 36.375 | 45.000 | 43.000 | |
| 25 | 27.333 | 45.542 | 47.125 | 45.000 | |
| 33 | 25.833 | 42.625 | 47.125 | 43.250 | |
| 33 | 30.167 | 47.750 | 46.500 | 40.125 | |
| 57 | 29.958 | 45.000 | 45.750 | 38.875 | |
| 38 | 30.542 | 48.500 | 43.500 | 35.875 | |
| 75 | 32.625 | 46.250 | 44.000 | 33.500 | |

ing day of month.

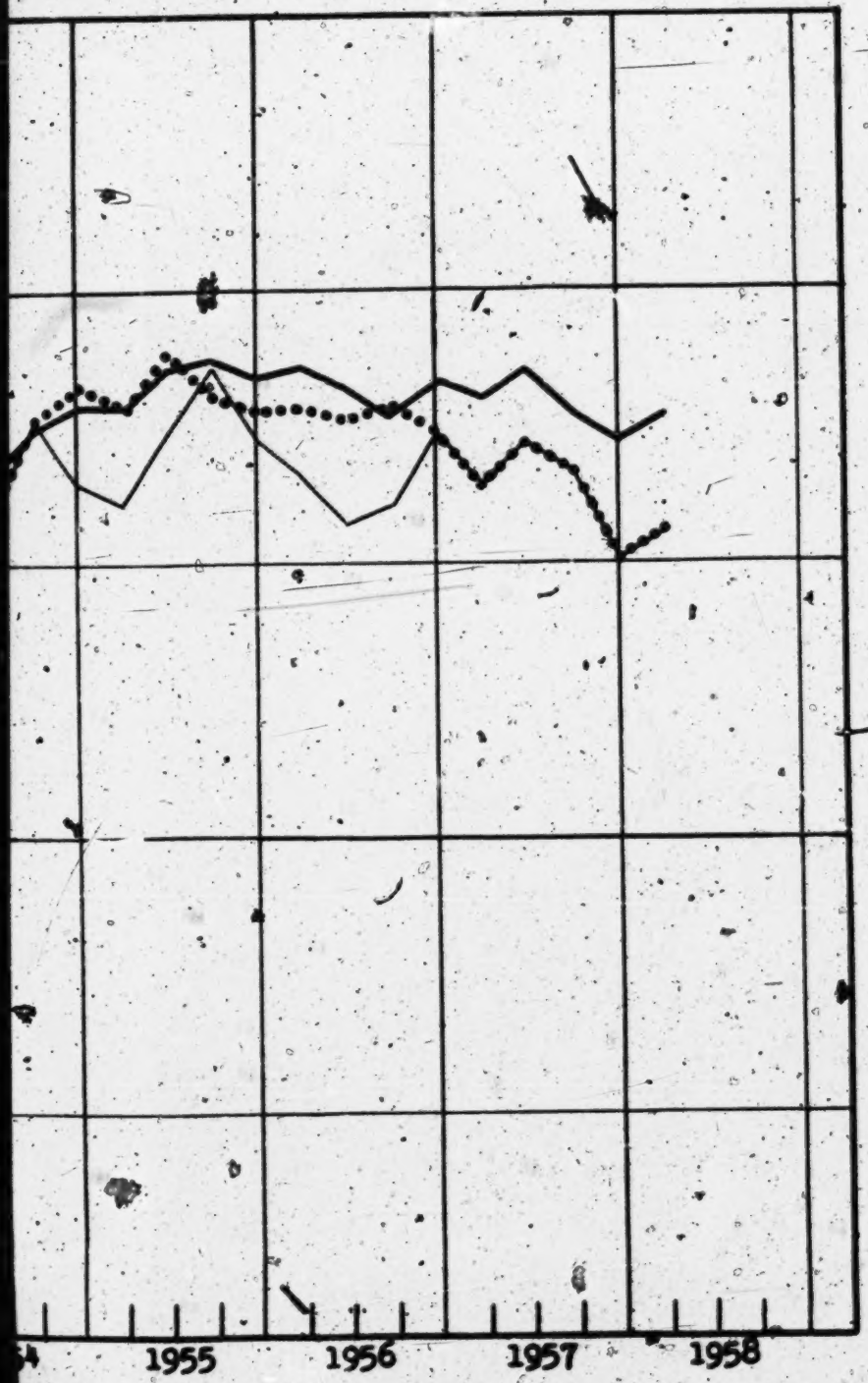
. 2, 1950. Closing
38.000.

er 30, 1955. Closing
: 1955 were $142.500

January 1946-August.

thly issues, 1946-1958.

...osite
...ON STOCK YIELDS
...UARTER 1958



[fol. 3202]

GOVERNMENT TRIAL EXHIBIT No. 323

SCHEDULE 15

2797

Page 1 of 2

## Yields on General Motors Common Stock
## Quarterly, First Quarter 1946-First Quarter 1958

| Year and Quarter | | Dividends Paid per Share (Including "Extras")[1] | | Dividends Excluding "Extras"[1] | | Closing Prices[2] | Yields | |
|---|---|---|---|---|---|---|---|---|
| | | Quarterly | 4-Quarter Total[2] | Quarterly | Annualized (3) x 4.0 | | Based on Total Dividends (2) ÷ (5) | Based on Dividends Excluding "Extras" (4) ÷ (5) |
| | | (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| 1945 | Second | $ 0.125 | | $ 0.125 | | | | |
| | Third | 0.125 | | 0.125 | | | | |
| | Fourth | 0.125 | | 0.125 | | | | |
| 1946 | First | $ 0.125 | $ 0.500 | $ 0.125 | $ 0.500 | $ 12.000 | 4.17 % | 4.17 % |
| | Second | 0.083 | 0.458 | 0.083 | 0.332 | 11.854 | 3.86 | 2.80 |
| | Third | 0.083 | 0.416 | 0.083 | 0.332 | 8.792 | 4.73 | 3.78 |
| | Fourth | 0.083 | 0.374 | 0.083 | 0.332 | 8.750 | 4.27 | 3.79 |
| 1947 | First | $ 0.125 | $ 0.374 | $ 0.125 | $ 0.500 | $ 9.854 | 3.80 % | 5.07 % |
| | Second | 0.125 | 0.416 | 0.125 | 0.500 | 9.833 | 4.23 | 5.08 |
| | Third | 0.125 | 0.458 | 0.125 | 0.500 | 9.812 | 4.67 | 5.10 |
| | Fourth | 0.125 | 0.500 | 0.125 | 0.500 | 9.708 | 5.15 | 5.15 |
| 1948 | First | $ 0.125 | $ 0.500 | $ 0.125 | $ 0.500 | $ 9.125 | 5.48 % | 5.48 % |
| | Second | 0.125 | 0.500 | 0.125 | 0.500 | 10.625 | 4.71 | 4.71 |
| | Third | 0.167 | 0.542 | 0.167 | 0.668 | 10.042 | 5.40 | 6.65 |
| | Fourth | 0.333[3] | 0.750 | 0.167 | 0.668 | 9.729 | 7.71 | 6.87 |
| 1949 | First | $ 0.208 | $ 0.833 | $ 0.208 | $ 0.832 | $ 9.917 | 8.40 % | 8.39 % |
| | Second | 0.208 | 0.916 | 0.208 | 0.832 | 9.375 | 9.77 | 8.87 |
| | Third | 0.208 | 0.957 | 0.208 | 0.832 | 10.500 | 9.11 | 7.92 |
| | Fourth | 0.708[3] | 1.332 | 0.208 | 0.832 | 11.938 | 11.16 | 6.97 |
| 1950 | First | $ 0.250 | $ 1.374 | $ 0.250 | $ 1.000 | $ 12.750 | 10.78 % | 7.84 % |
| | Second | 0.250 | 1.416 | 0.250 | 1.000 | 14.583 | 9.71 | 6.86 |
| | Third | 0.667[3] | 1.875 | 0.250 | 1.000 | 16.375 | 11.45 | 6.11 |
| | Fourth | 0.833[3] | 2.000 | 0.333 | 1.332 | 15.417 | 12.97 | 8.64 |
| 1951 | First | $ 0.333 | $ 2.083 | $ 0.333 | $ 1.332 | $ 17.292 | 12.05 % | 7.70 % |
| | Second | 0.333 | 2.166 | 0.333 | 1.332 | 15.458 | 14.01 | 8.62 |
| | Third | 0.333 | 1.832 | 0.333 | 1.332 | 17.083 | 10.72 | 7.80 |
| | Fourth | 0.333 | 1.332 | 0.333 | 1.332 | 17.333 | 7.68 | 7.68 |
| 1952 | First | $ 0.333 | $ 1.332 | $ 0.333 | $ 1.332 | $ 18.375 | 7.25 % | 7.25 % |
| | Second | 0.333 | 1.332 | 0.333 | 1.332 | 19.458 | 6.85 | 6.85 |
| | Third | 0.333 | 1.332 | 0.333 | 1.332 | 19.875 | 6.70 | 6.70 |
| | Fourth | 0.333 | 1.332 | 0.333 | 1.332 | 22.958 | 5.80 | 5.80 |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Average | 6.30 | + 5.34 | + 1.32 | − 0.46 | + 1.23 | + 0.78 | + 2.69 | + 0.05 | + 2.26 | + 7.80 | +10.29 |

Explanatory Notes

With reference to figures listed under the general heading of "Percentage Change", details regarding the periods of time involved in the comparisons are as follows:

| | *From* | *To* |
|---|---|---|
| Column (1) | 3 Month-Ends Preceding Month-of-Offering | 2 Month-Ends Preceding Month-of-Offering |
| Column (2) | 2 Month-Ends Preceding Month-of-Offering | 1 Month-End Preceding Month-of-Offering |
| Column (3) | 1 Month-End Preceding Month-of-Offering | End of Month-of-Offering |
| Column (4) | End of Month-of-Offering | 1 Month-End Following Month-of-Offering |
| Column (5) | 1 Month-End Following Month-of-Offering | 12 Month-Ends Following Month-of-Offering |

[1] From February 1951 to February 1952, Standard & Poor's Index for 11 Steel Stocks declined 13.49%.

[2] From March 1952 to March 1953, Standard & Poor's Index for 5 Tobacco-Cigarette Stocks increased 24.21%.

[3] From September 1956 to September 1957, Standard & Poor's Index of 9 Aircraft Manufacturer Stocks declined 21.84%.

[4] From February 1957 to February 1958, Standard & Poor's Index of 7 Copper Stocks declined 27.26%.

[5] From March 1951 to March 1952, Standard & Poor's Index for 11 Steel Stocks declined 8.96%.

[6] From April 1957 to April 1958, Standard & Poor's Index for 3 Sulphur Stocks declined 32.43%.

# Yields on General Motors Common Stock
## Quarterly, First Quarter 1946-First Quarter 1958

| Year and Quarter | | Dividends Paid per Share (Including "Extras")[1] | | Dividends Excluding "Extras"[1] | | Closing Prices[1] | Yields | |
|---|---|---|---|---|---|---|---|---|
| | | Quarterly | 4-Quarter Total[2] | Quarterly | Annualized | | Based on Total Dividends | Based on Dividends Excluding "Extras" |
| | | | | | (3) x 4.0 | | (2) ÷ (5) | (4) ÷ (5) |
| | | (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| 1953 | First | $ 0.333 | $ 1.332 | $ 0.333 | $ 1.332 | $ 21.042 | 6.33 % | 6.33 % |
| | Second | 0.333 | 1.332 | 0.333 | 1.332 | 19.958 | 6.67 | 6.67 |
| | Third | 0.333 | 1.332 | 0.333 | 1.332 | 18.583 | 7.17 | 7.17 |
| | Fourth | 0.333 | 1.332 | 0.333 | 1.332 | 19.875 | 6.70 | 6.70 |
| 1954 | First | $ 0.333 | $ 1.332 | $ 0.333 | $ 1.332 | $ 21.875 | 6.09 % | 6.09 % |
| | Second | 0.333 | 1.332 | 0.333 | 1.332 | 24.250 | 5.49 | 5.49 |
| | Third | 0.333 | 1.332 | 0.333 | 1.332 | 30.167 | 4.42 | 4.42 |
| | Fourth | 0.667[3] | 1.666 | 0.333 | 1.332 | 32.625 | 5.11 | 4.08 |
| 1955 | First | $ 0.333 | $ 1.666 | $ 0.333 | $ 1.332 | $ 31.167 | 4.35 % | 4.27 % |
| | Second | 0.333 | 1.666 | 0.333 | 1.332 | 36.375 | 4.58 | 3.66 |
| | Third | 0.500 | 1.833 | 0.500 | 2.000 | 47.750 | 3.84 | 4.19 |
| | Fourth | 1.000[3] | 2.166 | 0.500 | 2.000 | 46.250 | 4.68 | 4.32 |
| 1956 | First | $ 0.500 | $ 2.333 | $ 0.500 | $ 2.000 | $ 46.500 | 5.02 % | 4.30 % |
| | Second | 0.500 | 2.500 | 0.500 | 2.000 | 45.000 | 5.56 | 4.44 |
| | Third | 0.500 | 2.500 | 0.500 | 2.000 | 46.500 | 5.38 | 4.30 |
| | Fourth | 0.500 | 2.000 | 0.500 | 2.000 | 44.000 | 4.55 | 4.55 |
| 1957 | First | $ 0.500 | $ 2.000 | $ 0.500 | $ 2.000 | $ 38.875 | 5.14 % | 5.14 % |
| | Second | 0.500 | 2.000 | 0.500 | 2.000 | 43.000 | 4.65 | 4.65 |
| | Third | 0.500 | 2.000 | 0.500 | 2.000 | 40.125 | 4.98 | 4.98 |
| | Fourth | 0.500 | 2.000 | 0.500 | 2.000 | 33.500 | 5.97 | 5.97 |
| 1958 | First | $ 0.500 | $ 2.000 | $ 0.500 | $ 2.000 | $ 35.125 | 5.69 % | 5.69 % |

[1] Adjusted for stock splits by dividing closing prices and dividends for $10 par common stock by 6 and for $5 par common stock by 3.

[2] Sum of dividends paid in given and preceding three quarters.

[3] Year-end dividend:

[4] Includes $0.417 extra dividend.

[5] Includes $0.500 extra dividend.

Source: (1) Derived from data in Schedule 14.

(3) Determined by interpretation of data in column (1).

(5) Schedule 11.

[fol. 3204]

GOVERNMENT TRIAL EXHIBIT No. 323-A

## Actual Dividend Payments per Share, General Motors and du Pont Common Stock Quarterly, Second Quarter 1945-First Quarter 1958

| Year and Quarter | | Actual Dividend Payments per Share | |
|---|---|---|---|
| | | General Motors[1] | Du Pont[2] |
| | | (1) | (2) |
| 1945 | Second | $ 0.75 | $ 1.25 |
| | Third | 0.75 | 1.25 |
| | Fourth | 0.75 | 1.50[3] |
| 1946 | First | $ 0.75 | $ 1.25 |
| | Second | 0.50 | 1.75 |
| | Third | 0.50 | 1.75 |
| | Fourth | 0.50 | 2.25[3] |
| 1947 | First | $ 0.75 | $ 2.00 |
| | Second | 0.75 | 2.00 |
| | Third | 0.75 | 2.00 |
| | Fourth | 0.75 | 2.00[3] |
| 1948 | First | $ 0.75 | $ 2.00 |
| | Second | 0.75 | 2.00 |
| | Third | 1.00 | 2.00 |
| | Fourth | 2.00[3] | 3.75[3] |
| 1949 | First | $ 1.25 | $ 2.50 |
| | Second | 1.25 | 2.50 |
| | Third | 1.25 | 0.65 |
| | Fourth | 4.25[3] | 1.50[3] |
| 1950 | First | $ 1.50 | $ 0.75 |
| | Second | 1.50 | 0.85 |
| | Third | 4.00[4] | 1.50 |
| | Fourth | 2.50[3] | 2.25[3] |
| 1951 | First | $ 1.00 | $ 0.85 |
| | Second | 1.00 | 0.85 |
| | Third | 1.00 | 0.85 |
| | Fourth | 1.00 | 1.00[3] |
| 1952 | First | $ 1.00 | $ 0.85 |
| | Second | 1.00 | 0.85 |
| | Third | 1.00 | 0.85 |
| | Fourth | 1.00 | 1.00[3] |
| 1953 | First | $ 1.00 | $ 0.85 |
| | Second | 1.00 | 0.85 |
| | Third | 1.00 | 0.85 |
| | Fourth | 1.00 | 1.25[3] |
| 1954 | First | $ 1.00 | $ 1.00 |
| | Second | 1.00 | 1.00 |
| | Third | 1.00 | 1.00 |
| | Fourth | 2.00[3] | 2.50[3] |
| 1955 | First | $ 1.00 | $ 1.25 |
| | Second | 1.00 | 1.25 |
| | Third | 1.50 | 1.50 |
| | Fourth | 1.00[3] | 3.00[3] |
| 1956 | First | $ 0.50 | $ 1.50 |
| | Second | 0.50 | 1.50 |
| | Third | 0.50 | 1.50 |
| | Fourth | 0.50 | 2.00[3] |
| 1957 | First | $ 0.50 | $ 1.50 |
| | Second | 0.50 | 1.50 |
| | Third | 0.50 | 1.50 |
| | Fourth | 0.50 | 2.00[3] |
| 1958 | First | $ 0.50 | $ 1.50 |

[1] General Motors divid
1945 to third quarte
common stock; for fo
third quarter 1955,
and for fourth quart
1958, on $1-2/3 par

[2] Du Pont dividends fo
second quarter 1949
stock; for third qua
1958, on $5 par comm

[3] Year-end dividend.

[4] Includes $2.50 extra

[5] Includes $1.50 extra

Source: Standard
Annual D

nt Common Stock
958

ts

Pont[2]

(2)

0.85
0.85
0.85
1.00[3]

0.85
0.85
0.85
1.25[3]

1.00
1.00
1.00
2.50[3]

1.25
1.25
1.50
3.00[3]

1.50
1.50
1.50
2.00[3]

1.50
1.50
1.50
2.00[3]

1.50

[1] General Motors dividends for second quarter 1945 to third quarter 1950 are on $10 par common stock; for fourth quarter 1950 to third quarter 1955, on $5 par common stock; and for fourth quarter 1955 to first quarter 1958, on $1-2/3 par common stock.

[2] Du Pont dividends for second quarter 1945 to second quarter 1949 are on $20 par common stock; for third quarter 1949 to first quarter 1958, on $5 par common stock.

[3] Year-end dividend.

[4] Includes $2.50 extra dividend.

[5] Includes $1.50 extra dividend.

Source: Standard & Poor's Corporation, Annual Dividend Record.

# Spread Between Yields for General Motors Common Stock and Standard & Poor's Composite Stocks Quarterly, First Quarter 1946 - First Quarter 1958

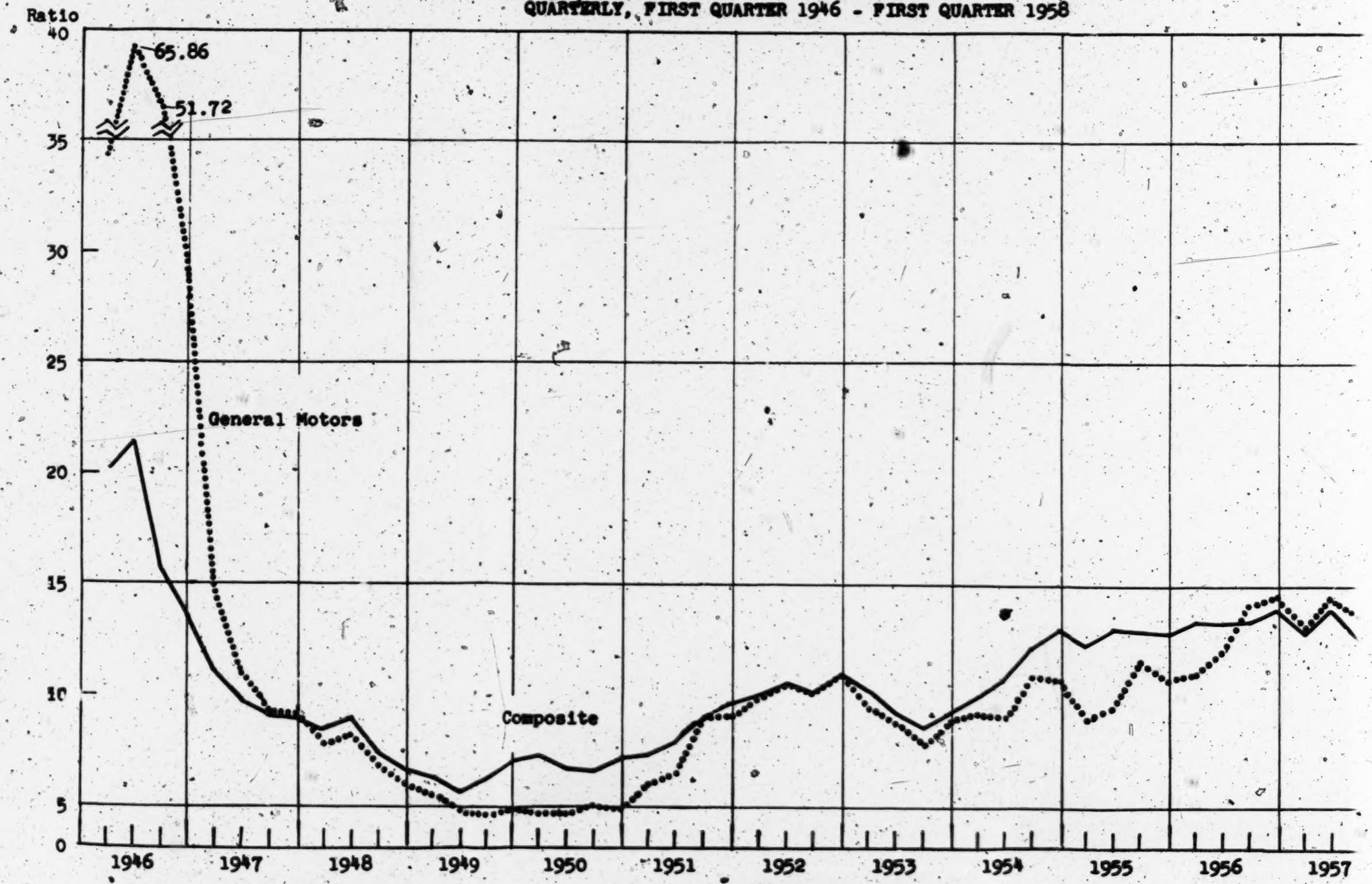
| Year and Quarter | | General Motors (1) | Composite (2) | Spread (1) - (2) (3) |
|---|---|---|---|---|
| 1946 | First | 4.17 % | 3.65 % | + 0.52 % |
| | Second | 2.80 | 3.64 | - 0.84 |
| | Third | 3.78 | 4.48 | - 0.70 |
| | Fourth | 3.79 | 4.51 | - 0.72 |
| 1947 | First | 5.07 % | 4.68 % | + 0.39 % |
| | Second | 5.08 | 4.93 | + 0.15 |
| | Third | 5.10 | 5.16 | - 0.06 |
| | Fourth | 5.15 | 5.49 | - 0.34 |
| 1948 | First | 5.48 % | 5.57 % | - 0.09 % |
| | Second | 4.71 | 5.02 | - 0.31 |
| | Third | 6.65 | 5.55 | + 1.10 |
| | Fourth | 6.87 | 6.05 | + 0.82 |
| 1949 | First | 8.39 % | 6.44 % | + 1.95 % |
| | Second | 8.87 | 7.13 | + 1.74 |
| | Third | 7.92 | 6.68 | + 1.24 |
| | Fourth | 6.97 | 6.74 | + 0.23 |
| 1950 | First | 7.84 % | 6.71 % | + 1.13 % |
| | Second | 6.86 | 6.78 | + 0.08 |
| | Third | 6.11 | 6.89 | - 0.78 |
| | Fourth | 8.64 | 7.30 | + 1.34 |
| 1951 | First | 7.70 % | 7.20 % | + 0.50 % |
| | Second | 8.62 | 7.59 | + 1.03 |
| | Third | 7.80 | 6.62 | + 1.18 |
| | Fourth | 7.68 | 5.97 | + 1.71 |

| Year and Quarter | | General Motors (1) |
|---|---|---|
| 1952 | First | 7.25 % |
| | Second | 6.86 |
| | Third | 6.70 |
| | Fourth | 5.80 |
| 1953 | First | 6.33 % |
| | Second | 6.67 |
| | Third | 7.17 |
| | Fourth | 6.70 |
| 1954 | First | 6.09 % |
| | Second | 5.49 |
| | Third | 4.42 |
| | Fourth | 4.08 |
| 1955 | First | 4.27 % |
| | Second | 3.66 |
| | Third | 4.19 |
| | Fourth | 4.32 |
| 1956 | First | 4.30 % |
| | Second | 4.44 |
| | Third | 4.30 |
| | Fourth | 4.55 |
| 1957 | First | 5.14 % |
| | Second | 4.65 |
| | Third | 4.98 |
| | Fourth | 5.97 |
| 1958 | First | 5.69 % |
| Total | | 286.06 % |
| Average | | 5.84 % |

Source: (1) Exhibit 323, column (7).

| | General Motors | Composite | Spread |
|---|---|---|---|
| | | | (1) - (2) |
| | (1) | (2) | (3) |
| : | 7.25 % | 5.88 % | + 1.37 % |
| id | 6.85 | 5.77 | + 1.08 |
| l | 6.70 | 5.89 | + 0.81 |
| :h | 5.80 | 5.31 | + 0.49 |
| | 6.33 % | 5.61 % | + 0.72 % |
| id | 6.67 | 5.90 | + 0.77 |
| | 7.17 | 6.14 | + 1.03 |
| h | 6.70 | 5.87 | + 0.83 |
| | 6.09 % | 5.43 % | + 0.66 % |
| d | 5.49 | 5.00 | + 0.49 |
| | 4.42 | 4.50 | - 0.08 |
| h | 4.08 | 4.25 | - 0.17 |
| | 4.27 % | 4.26 % | + 0.01 % |
| d | 3.66 | 3.89 | - 0.23 |
| | 4.19 | 3.79 | + 0.40 |
| h | 4.32 | 3.94 | + 0.38 |
| | 4.30 % | 3.85 % | + 0.45 % |
| d | 4.44 | 4.10 | + 0.34 |
| | 4.30 | 4.35 | - 0.05 |
| h | 4.55 | 4.01 | + 0.54 |
| | 5.14 % | 4.18 % | + 0.96 % |
| d | 4.65 | 3.89 | + 0.76 |
| | 4.98 | 4.34 | + 0.64 |
| h | 5.97 | 4.65 | + 1.32 |
| | 5.69 % | 4.36 % | + 1.33 % |
| | 286.06 % | 259.94 % | + 26.12 % |

COMPARISON OF PRICE-EARNINGS RATIOS OF GENERAL MOTORS COMMON STOCK
WITH STANDARD & POOR'S COMMON STOCK PRICE-EARNINGS RATIOS
QUARTERLY, FIRST QUARTER 1946 - FIRST QUARTER 1958




Exhibits 301 and 326

Source: ~~Schedules 3 and 16.~~

[fol. 3207]

GOVERNMENT TRIAL EXHIBIT No. 330

**Du Pont Common Stock Closing Prices, Actual and Adjusted for Stock Splits**
**Monthly, January 1946-May 1958**

| | 1946 | 1947 | 1948 | 1949 | 1950 | 1951 | 1952 | 1953 | 1954 | 1955 | 1956 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Actual[1] | | | | | | | | | | |
| January | $ 193.500 | $ 189.000 | $ 180.500 | $ 186.750 | $ 62.250 | $ 86.375 | $ 87.500 | $ 100.000 | $ 109.500 | $ 162.000 | $ 219.75 |
| February | 186.000 | 189.500 | 166.000 | 182.750 | 62.750 | 88.750 | 85.750 | 97.250 | 108.625 | 173.000 | 223.00 |
| March | 197.750 | 188.750 | 175.000 | 188.750 | 67.625 | 88.250 | 87.000 | 97.500 | 116.250 | 169.250 | 230.00 |
| April | 210.000 | 180.000 | 174.250 | 189.125 | 74.375 | 96.875 | 80.625 | 94.375 | 127.625 | 187.000 | 220.75 |
| May | 218.250 | 177.500 | 183.500 | 47.000[2] | 79.500 | 95.000 | 84.875 | 94.875 | 125.875 | 195.000 | 207.87 |
| June | 215.500 | 192.500 | 186.000 | 46.250 | 76.125 | 92.000 | 86.750 | 94.875 | 134.000 | 229.750 | 211.00 |
| July | 214.500 | 191.500 | 175.500 | 47.250 | 72.375 | 93.250 | 90.625 | 98.125 | 137.000 | 226.250 | 215.25 |
| August | 197.000 | 190.750 | 166.500 | 50.000 | 77.750 | 98.375 | 87.750 | 96.000 | 132.500 | 227.500 | 205.00 |
| September | 183.375 | 188.500 | 168.500 | 53.250 | 80.125 | 96.375 | 86.250 | 99.125 | 144.500 | 219.000 | 192.75 |
| October | 172.000 | 185.500 | 180.375 | 57.125 | 78.625 | 88.375 | 85.375 | 102.750 | 139.500 | 215.125 | 194.37 |
| November | 181.000 | 184.500 | 165.750 | 58.625 | 78.750 | 85.875 | 95.375 | 106.500 | 163.125 | 226.500 | 182.50 |
| December | 190.750 | 187.000 | 184.500 | 61.625 | 84.000 | 92.000 | 96.625 | 107.375 | 167.500 | 231.000 | 192.75 |
| | Adjusted[3] | | | | | | | | | | |
| January | $ 48.375 | $ 47.250 | $ 45.125 | $ 46.688 | $ 62.250 | $ 86.375 | $ 87.500 | $ 100.000 | $ 109.500 | $ 162.000 | $ 219.75 |
| February | 46.500 | 47.375 | 41.500 | 45.688 | 62.750 | 88.750 | 85.750 | 97.250 | 108.625 | 173.000 | 223.00 |
| March | 49.438 | 47.188 | 43.750 | 47.188 | 67.625 | 88.250 | 87.000 | 97.500 | 116.250 | 169.250 | 230.00 |
| April | 52.500 | 45.000 | 43.562 | 47.281 | 74.375 | 96.875 | 80.625 | 94.375 | 127.625 | 187.000 | 220.75 |
| May | 54.562 | 44.375 | 45.875 | 47.000 | 79.500 | 95.000 | 84.875 | 94.875 | 125.875 | 195.000 | 207.87 |
| June | 53.875 | 48.125 | 46.500 | 46.250 | 76.125 | 92.000 | 86.750 | 94.875 | 134.000 | 229.750 | 211.00 |
| July | 53.625 | 47.875 | 43.875 | 47.250 | 72.375 | 93.250 | 90.625 | 98.125 | 137.000 | 226.250 | 215.25 |
| August | 49.250 | 47.688 | 41.625 | 50.000 | 77.750 | 98.375 | 87.750 | 96.000 | 132.500 | 227.500 | 205.00 |
| September | 45.844 | 47.125 | 42.125 | 53.250 | 80.125 | 96.375 | 86.250 | 99.125 | 144.500 | 219.000 | 192.75 |
| October | 43.000 | 46.375 | 45.094 | 57.125 | 78.625 | 88.375 | 85.375 | 102.750 | 139.500 | 215.125 | 194.37 |
| November | 45.250 | 46.125 | 41.438 | 58.625 | 78.750 | 85.875 | 95.375 | 106.500 | 163.125 | 226.500 | 182.50 |
| December | 47.688 | 46.750 | 46.125 | 61.625 | 84.000 | 92.000 | 96.625 | 107.375 | 167.500 | 231.000 | 192.75 |

[1] New York Stock Exchange closing prices as of last trading day of month.

[2] 4-for-1 split of $20 par common stock effective June 15, 1949. Closing price of $20 par stock traded for May 1949 was $186.500.

[3] Data adjusted for split by dividing actual prices for January 1946-April 1949 by 4.

Source: William B. Dana Company, Bank and Quotation Record, monthly issues, 1946-1958.

SCHEDULE 12

for Stock Splits

| | 1954 | 1955 | 1956 | 1957 | 1958 |
|---|---|---|---|---|---|
| 00 | $ 109.500 | $ 162.000 | $ 219.750 | $ 184.000 | $ 185.000 |
| 50 | 108.625 | 173.000 | 223.000 | 176.250 | 175.000 |
| 00 | 116.250 | 169.250 | 230.000 | 179.750 | 175.000 |
| 75 | 127.625 | 187.000 | 220.750 | 193.000 | 178.000 |
| 75 | 125.875 | 195.000 | 207.875 | 196.500 | 178.125 |
| 75 | 134.000 | 229.750 | 211.000 | 192.500 | |
| 25 | 137.000 | 226.250 | 215.250 | 200.000 | |
| 00 | 132.500 | 227.500 | 205.000 | 188.750 | |
| 35 | 144.500 | 219.000 | 192.750 | 177.250 | |
| 30 | 139.500 | 215.125 | 194.375 | 175.250 | |
| 00 | 163.125 | 226.500 | 182.500 | 181.500 | |
| 75 | 167.500 | 231.000 | 192.750 | 176.375 | |

| | | | | | |
|---|---|---|---|---|---|
| 00 | $ 109.500 | $ 162.000 | $ 219.750 | $ 184.000 | $ 185.000 |
| 50 | 108.625 | 173.000 | 223.000 | 176.250 | 175.000 |
| 00 | 116.250 | 169.250 | 230.000 | 179.750 | 175.000 |
| 75 | 127.625 | 187.000 | 220.750 | 193.000 | 178.000 |
| 75 | 125.875 | 195.000 | 207.875 | 196.500 | 178.125 |
| 75 | 134.000 | 229.750 | 211.000 | 192.500 | |
| 25 | 137.000 | 226.250 | 215.250 | 200.000 | |
| 00 | 132.500 | 227.500 | 205.000 | 188.750 | |
| 35 | 144.500 | 219.000 | 192.750 | 177.250 | |
| 30 | 139.500 | 215.125 | 194.375 | 175.250 | |
| 00 | 163.125 | 226.500 | 182.500 | 181.500 | |
| 75 | 167.500 | 231.000 | 192.750 | 176.375 | |

g day of month.

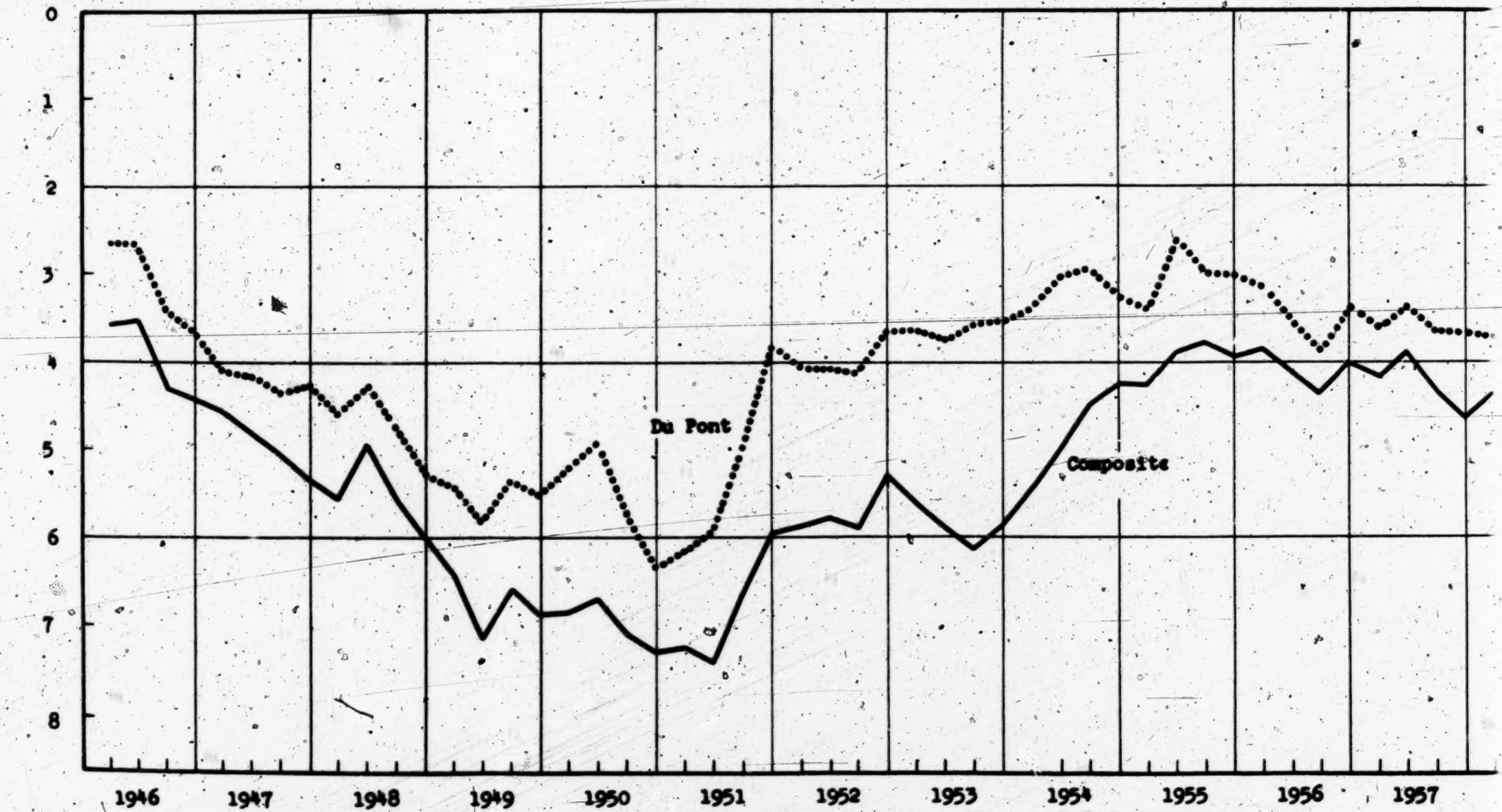
1949. Closing

nuary 1946-

hly issues, 1946-1958.

Composite

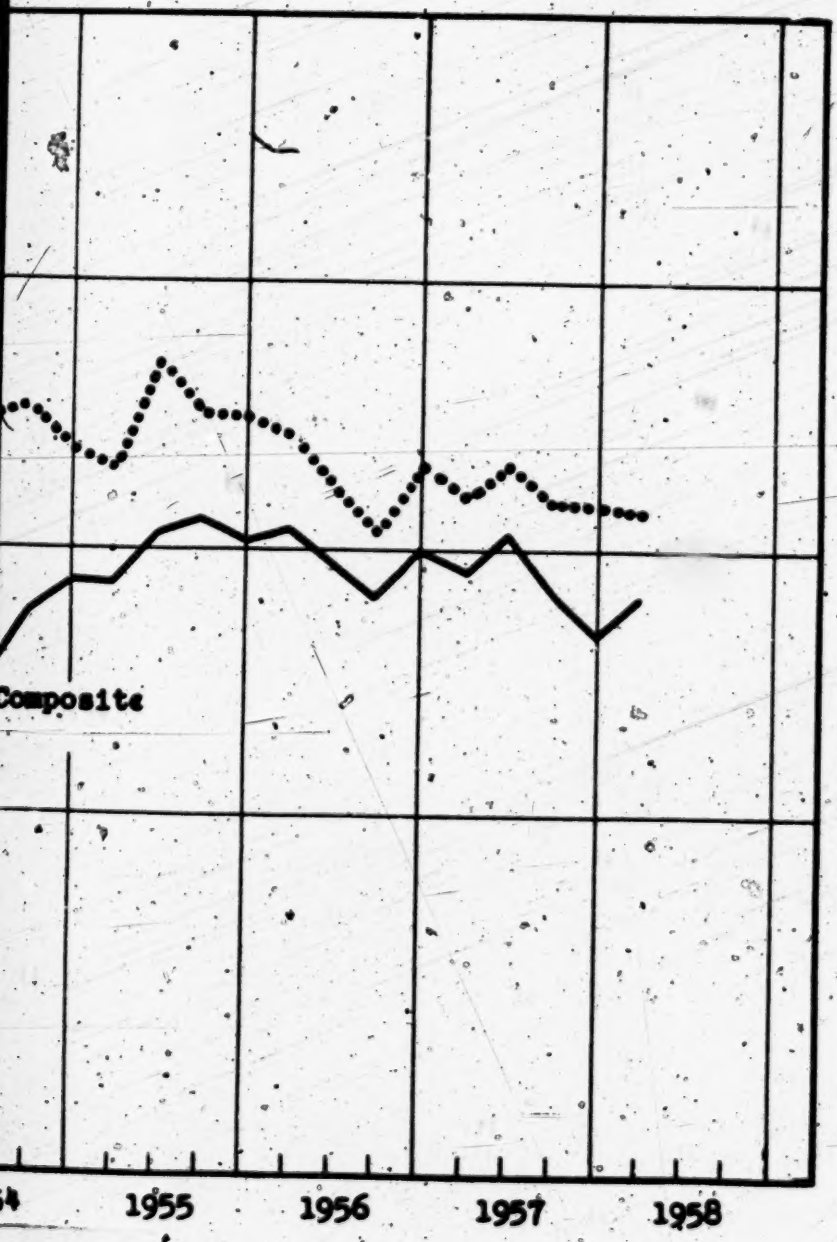
COMPARISON OF YIELDS ON DU PONT COMMON STOCK WITH STANDARD & POOR'S COMMON STOCK YIELDS
QUARTERLY, FIRST QUARTER 1946 - FIRST QUARTER 1958




Exhibits 299 and 333

Source: ~~Schedules 2 and 18~~.

K YIELDS
1958



[fol. 3209] GOVERNMENT TRIAL EXHIBIT NO. 335

SCHEDULE 18

Yield on du Pont Common Stock
Quarterly, First Quarter 1946–First Quarter 1958

| Year and Quarter | Dividends Paid per Share (Including "Extras")[1] Quarterly (1) | 4-Quarter Total[2] (2) | Closing Prices[1] (3) | Yields (2)÷(3) (4) |
|---|---|---|---|---|
| 1945 Second | $0.312 | | | |
| Third | 0.312 | | | |
| Fourth | 0.375[3] | | | |
| 1946 First | $0.312 | $1.311 | $49.438 | 2.65% |
| Second | 0.438 | 1.437 | 53.875 | 2.67 |
| Third | 0.438 | 1.563 | 45.844 | 3.41 |
| Fourth | 0.562[3] | 1.750 | 47.688 | 3.67 |
| 1947 First | $0.500 | $1.938 | $47.188 | 4.11% |
| Second | 0.500 | 2.000 | 48.125 | 4.16 |
| Third | 0.500 | 2.062 | 47.125 | 4.38 |
| Fourth | 0.500[3] | 2.000 | 46.750 | 4.28 |
| 1948 First | $0.500 | $2.000 | $43.750 | 4.57% |
| Second | 0.500 | 2.000 | 46.500 | 4.30 |
| Third | 0.500 | 2.000 | 42.125 | 4.75 |
| Fourth | 0.938[3] | 2.438 | 46.125 | 5.29 |
| 1949 First | $0.625 | $2.563 | $47.188 | 5.43% |
| Second | 0.625 | 2.688 | 46.250 | 5.81 |
| Third | 0.650 | 2.838 | 53.250 | 5.33 |
| Fourth | 1.500[3] | 3.400 | 61.625 | 5.52 |
| 1950 First | $0.750 | $3.525 | $67.625 | 5.21% |
| Second | 0.850 | 3.750 | 76.125 | 4.93 |
| Third | 1.500 | 4.600 | 80.125 | 5.74 |
| Fourth | 2.250[3] | 5.350 | 84.000 | 6.37 |
| 1951 First | $0.850 | $5.450 | $ 88.250 | 6.18% |
| Second | 0.850 | 5.450 | 92.000 | 5.92 |
| Third | 0.850 | 4.800 | 96.375 | 4.98 |
| Fourth | 1.000[3] | 3.550 | 92.000 | 3.86 |
| 1952 First | $0.850 | $3.550 | $ 87.000 | 4.08% |
| Second | 0.850 | 3.550 | 86.750 | 4.09 |
| Third | 0.850 | 3.550 | 86.250 | 4.12 |
| Fourth | 1.000[3] | 3.550 | 96.625 | 3.67 |
| [fol. 3210] | | | | |
| 1953 First | $0.850 | $3.550 | $ 97.500 | 3.64% |
| Second | 0.850 | 3.550 | 94.875 | 3.74 |
| Third | 0.850 | 3.550 | 99.125 | 3.58 |
| Fourth | 1.250[3] | 3.800 | 107.375 | 3.54 |
| 1954 First | $1.000 | $3.950 | $116.250 | 3.40% |
| Second | 1.000 | 4.100 | 134.000 | 3.06 |
| Third | 1.000 | 4.250 | 144.500 | 2.94 |
| Fourth | 2.500[3] | 5.500 | 167.500 | 4.28 |

GOVERNMENT TRIAL EXHIBIT No. 33—Continued

| Year and Quarter | Quarterly | 4-Quarter Total[2] | Closing Prices[1] | Yields (2)÷(3) |
|---|---|---|---|---|
| | (1) | (2) | (3) | (4) |
| 1955 First | $1.250 | $5.750 | $169.250 | 3.40% |
| Second | 1.250 | 6.000 | 229.750 | 2.61 |
| Third | 1.500 | 6.500 | 219.000 | 2.97 |
| Fourth | 3.000[3] | 7.000 | 231.000 | 3.03 |
| 1956 First | $1.500 | $7.250 | $230.000 | 3.15% |
| Second | 1.500 | 7.500 | 211.000 | 4.55 |
| Third | 1.500 | 7.500 | 192.750 | 3.89 |
| Fourth | 2.000[3] | 6.500 | 192.750 | 3.37 |
| 1957 First | $1.500 | $6.500 | $179.750 | 3.62% |
| Second | 1.500 | 6.500 | 192.500 | 3.38 |
| Third | 1.500 | 6.500 | 177.250 | 3.67 |
| Fourth | 2.000[3] | 6.500 | 176.375 | 3.69 |
| 1958 First | $1.500 | $6.500 | $175.000 | 3.71% |

[1] Adjusted for stock splits by dividing closing prices and dividends for $20 par common stock by 4.
[2] Sum of dividends paid in given and preceding three quarters.
[3] Year-end dividend.

Source: (1) Derived from data in Schedule 14. (G. Ex. 323-A)
(3) Schedule 12. (Govt. Ex. 330)

(Here follows 2 Photolithographs, side folios 3211, 3212

GOVERNMENT TRIAL EXHIBIT No. 334

## Spread Between Yields for du Pont Common Stock and Standard & Poor's Composite Stocks Quarterly, First Quarter 1946 - First Quarter 1958

| Year and Quarter | | Du Pont | Composite | Spread |
|---|---|---|---|---|
| | | | | (1) - (2) |
| | | (1) | (2) | (3) |
| 1946 | First | 2.65 % | 3.65 % | - 1.00 % |
| | Second | 2.67 | 3.64 | - 0.97 |
| | Third | 3.41 | 4.48 | - 1.07 |
| | Fourth | 3.67 | 4.51 | - 0.84 |
| 1947 | First | 4.11 % | 4.68 % | - 0.57 % |
| | Second | 4.16 | 4.93 | - 0.77 |
| | Third | 4.38 | 5.16 | - 0.78 |
| | Fourth | 4.28 | 5.49 | - 1.21 |
| 1948 | First | 4.57 % | 5.57 % | - 1.00 % |
| | Second | 4.30 | 5.02 | - 0.72 |
| | Third | 4.75 | 5.55 | - 0.80 |
| | Fourth | 5.29 | 6.05 | - 0.76 |
| 1949 | First | 5.43 % | 6.44 % | - 1.01 % |
| | Second | 5.81 | 7.13 | - 1.32 |
| | Third | 5.33 | 6.68 | - 1.35 |
| | Fourth | 5.52 | 6.74 | - 1.22 |
| 1950 | First | 5.21 % | 6.71 % | - 1.50 % |
| | Second | 4.93 | 6.78 | - 1.85 |
| | Third | 5.74 | 6.89 | - 1.15 |
| | Fourth | 6.37 | 7.30 | - 0.93 |
| 1951 | First | 6.18 % | 7.20 | - 1.02 |
| | Second | 5.92 | 7.59 | - 1.67 |
| | Third | 4.98 | 6.62 | - 1.64 |
| | Fourth | 3.86 | 5.97 | - 2.11 |
| 1952 | First | 4.08 % | 5.88 % | |
| | Second | 4.09 | 5.77 | |
| | Third | 4.12 | 5.89 | |
| | Fourth | 3.67 | 5.31 | |
| 1953 | First | 3.64 % | 5.61 % | |
| | Second | 3.74 | 5.90 | |
| | Third | 3.58 | 6.14 | |
| | Fourth | 3.54 | 5.87 | |
| 1954 | First | 3.40 % | 5.43 % | |
| | Second | 3.06 | 5.00 | |
| | Third | 2.94 | 4.50 | |
| | Fourth | 3.28 | 4.25 | |
| 1955 | First | 3.40 % | 4.26 % | |
| | Second | 2.61 | 3.89 | |
| | Third | 2.97 | 3.79 | |
| | Fourth | 3.03 | 3.94 | |
| 1956 | First | 3.15 % | 3.85 % | |
| | Second | 3.55 | 4.10 | |
| | Third | 3.89 | 4.35 | |
| | Fourth | 3.37 | 4.01 | |
| 1957 | First | 3.62 % | 4.18 % | |
| | Second | 3.38 | 3.89 | |
| | Third | 3.67 | 4.34 | |
| | Fourth | 3.69 | 4.65 | |
| 1958 | First | 3.71 % | 4.36 % | |
| Total | | 200.70 % | 259.94 % | |
| Average | | 4.10 % | 5.30 % | |

Source: (1) Exhibit 333.

(2) Exhibit 299.

cock

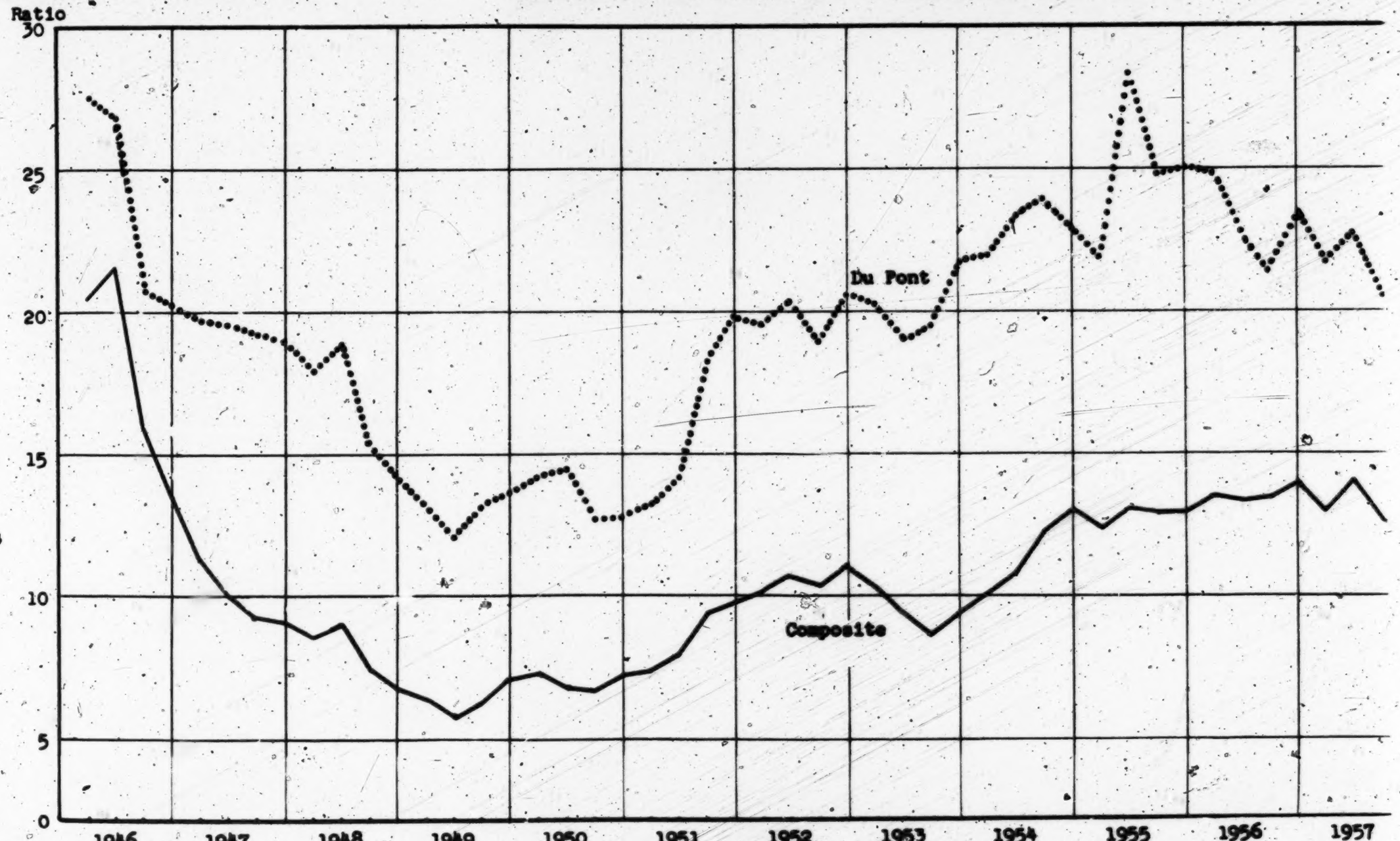
1958

2806A

| | Du Pont | Composite | Spread |
|---|---|---|---|
| | (1) | (2) | (1) - (2) (3) |
| | 4.08 % | 5.88 % | - 1.80 % |
| d | 4.09 | 5.77 | - 1.68 |
| | 4.12 | 5.89 | - 1.77 |
| h | 3.67 | 5.31 | - 1.64 |
| | 3.64 % | 5.61 % | - 1.97 % |
| d | 3.74 | 5.90 | - 2.16 |
| | 3.58 | 6.14 | - 2.56 |
| h | 3.54 | 5.87 | - 2.33 |
| | 3.40 % | 5.43 % | - 2.03 % |
| d | 3.06 | 5.00 | - 1.94 |
| | 2.94 | 4.50 | - 1.56 |
| h | 3.28 | 4.25 | - 0.97 |
| | 3.40 % | 4.26 % | - 0.86 % |
| d | 2.61 | 3.89 | - 1.28 |
| | 2.97 | 3.79 | - 0.82 |
| h | 3.03 | 3.94 | - 0.91 |
| | 3.15 % | 3.85 % | - 0.70 % |
| d | 3.55 | 4.10 | - 0.55 |
| | 3.89 | 4.35 | - 0.46 |
| h | 3.37 | 4.01 | - 0.64 |
| | 3.62 % | 4.18 % | - 0.56 % |
| d | 3.38 | 3.89 | - 0.51 |
| | 3.67 | 4.34 | - 0.67 |
| h | 3.69 | 4.65 | - 0.96 |
| | 3.71 % | 4.36 % | - 0.65 % |
| | 200.70 % | 259.94 % | - 59.24 % |
| | 4.10 % | 5.30 % | - 1.21 % |

GOVERNMENT TRIAL EXHIBIT No. 335

COMPARISON OF PRICE-EARNINGS RATIOS OF DU PONT COMMON STOCK WITH STANDARD & POOR'S Composite COMMON STOCK PRICE-EARNINGS RATIOS
QUARTERLY, FIRST QUARTER 1946 - FIRST QUARTER 1958




Exhibits 301 and 336

[fol. 3213] GOVERNMENT TRIAL EXHIBIT NO. 338

Proportion of DD Earnings Comprised of GM Dividends
Annually, 1946 through 1957

| Year | DD's Earnings Per Share[1] Derived from DD Operations (1) | Derived from GM Dividends (2) | Total (3) | GM as Per Cent of Total, (2)+(3) (4) |
|---|---|---|---|---|
| 1946 | $1 88 | $0 48 | $2 36 | 20 34% |
| 1947 | 1 83 | 0 64 | 2 47 | 25 91 |
| 1948 | 2 33 | 0 95 | 3 28 | 28 96 |
| 1949 | 2 84 | 1 68 | 4 52 | 37 17 |
| 1950 | 4 09 | 2 50 | 6 59 | 37 94 |
| 1951 | 3 01 | 1 63 | 4 64 | 35 13 |
| 1952 | 3 07 | 1 63 | 4 70 | 34 68 |
| 1953 | 3 31 | 1 63 | 4 94 | 33 00 |
| 1954 | 5 30 | 2 03 | 7 33 | 27 69 |
| 1955 | 6 51 | 2 75 | 9 26 | 29 70 |
| 1956 | 5 65 | 2 55 | 8 20 | 31 10 |
| 1957 | 5 93 | 2 55 | 8 48 | 30 07 |

[1] Per share data adjusted for stock splits.

Source: (1), (2) and (3) 1957 Annual Report of DD.

---

[fol. 3214] GOVERNMENT TRIAL EXHIBIT NO. 340

Turnover of New York Stock Exchange Shares
Annually, 1946 through 1957

| Year | Shares Traded (millions) (1) | Shares Listed[1] (millions) (2) | Turnover (1)÷(2) (3) |
|---|---|---|---|
| 1946 | 501 8 | 1,682 | 29 8% |
| 1947 | 336 6 | 1,839 | 18 3 |
| 1948 | 392 8 | 1,962 | 20 0 |
| 1949 | 353 4 | 2,092 | 16 9 |
| 1950 | 655 3 | 2,259 | 29 0 |
| 1951 | 579 8 | 2,485 | 23 3 |
| 1952 | 431 8 | 2,702 | 16 0 |
| 1953 | 449 3 | 2,857 | 15 7 |
| 1954 | 703 1 | 3,050 | 23 1 |
| 1955 | 820 5 | 3,505 | 23 4 |
| 1956 | 699 2 | 4,149 | 16 9 |
| 1957 | 714 5 | 4,633 | 15/4 |

[1] Average for the year.

Source: (1) and (2) New York Stock Exchange, *Fact Book*—1958, pp. 20–21.

[fol. 3215]

GOVERNMENT TRIAL EXHIBIT NO. 342

**Total Shares Traded and Market Value of All Transactions on the New York Stock Exchange**
**Monthly, January 1946-May 1958**

| | 1946 | 1947 | 1948 | 1949 | 1950 | 1951 | 1952 | 1953 | 1954 | 1955 | 1956 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Shares Traded (Thousands) | | | | | | | | | | |
| January | 69,182 | 31,831 | 27,936 | 26,212 | 54,738 | 89,867 | 46,098 | 44,757 | 41,787 | 94,047 | 60,198 |
| February | 51,851 | 32,468 | 22,989 | 22,078 | 43,282 | 57,630 | 38,672 | 35,789 | 43,075 | 79,765 | 52,379 |
| March | 35,776 | 25,218 | 27,709 | 24,807 | 50,546 | 47,222 | 35,009 | 51,200 | 51,588 | 83,260 | 78,219 |
| April | 43,947 | 29,003 | 43,768 | 27,854 | 60,680 | 42,616 | 38,790 | 51,077 | 54,720 | 69,159 | 68,809 |
| May | 45,555 | 27,031 | 54,683 | 24,006 | 56,143 | 52,604 | 32,338 | 34,426 | 52,295 | 58,308 | 65,801 |
| June | 31,969 | 22,915 | 42,483 | 24,306 | 54,030 | 34,817 | 32,089 | 34,380 | 52,216 | 69,487 | 49,981 |
| July | 28,602 | 32,055 | 32,676 | 25,739 | 56,669 | 36,744 | 32,119 | 27,239 | 63,591 | 63,942 | 56,768 |
| August | 28,334 | 21,534 | 21,032 | 28,678 | 49,771 | 42,912 | 28,059 | 28,201 | 70,889 | 53,335 | 59,027 |
| September | 57,632 | 20,199 | 21,736 | 29,617 | 46,388 | 46,239 | 29,769 | 35,456 | 51,673 | 67,905 | 46,130 |
| October | 38,311 | 36,481 | 26,158 | 36,071 | 60,589 | 53,689 | 33,575 | 31,207 | 57,413 | 60,139 | 50,687 |
| November | 33,469 | 22,489 | 36,248 | 36,443 | 51,192 | 37,302 | 34,373 | 31,745 | 71,736 | 56,371 | 55,542 |
| December | 37,192 | 35,328 | 35,336 | 47,565 | 71,252 | 38,200 | 50,932 | 43,850 | 92,090 | 64,739 | 55,704 |
| | Market Value (Thousand Dollars) | | | | | | | | | | |
| January | $ 1,945,896 | $ 913,322 | $ 784,516 | $ 715,425 | $ 1,408,237 | $ 2,570,052 | $ 1,616,615 | $ 1,412,254 | $ 1,294,161 | $ 3,434,814 | $ 2,462,732 |
| February | 1,573,357 | 942,966 | 656,553 | 601,289 | 1,163,847 | 1,785,341 | 1,349,869 | 1,172,633 | 1,458,324 | 3,058,118 | 2,180,736 |
| March | 1,216,555 | 769,789 | 759,003 | 625,375 | 1,420,893 | 1,436,354 | 1,214,392 | 1,616,089 | 1,750,554 | 3,269,994 | 3,241,995 |
| April | 1,496,896 | 817,285 | 1,217,998 | 715,266 | 1,530,369 | 1,317,934 | 1,372,788 | 1,537,713 | 1,877,369 | 2,732,510 | 2,910,434 |
| May | 1,426,194 | 741,612 | 1,466,880 | 636,303 | 1,602,689 | 1,746,198 | 1,074,480 | 1,126,266 | 1,844,309 | 2,302,188 | 2,817,462 |
| June | 1,147,457 | 675,500 | 1,224,892 | 585,125 | 1,678,069 | 1,141,153 | 1,095,475 | 1,104,721 | 1,819,533 | 2,779,342 | 2,137,898 |
| July | 1,007,308 | 898,760 | 934,039 | 525,856 | 1,692,127 | 1,168,676 | 1,109,918 | 903,086 | 2,142,409 | 2,651,851 | 2,428,267 |
| August | 974,399 | 624,325 | 623,414 | 671,814 | 1,455,703 | 1,391,754 | 977,347 | 945,629 | 2,409,895 | 2,222,947 | 2,668,765 |
| September | 1,615,961 | 607,917 | 625,815 | 729,131 | 1,379,306 | 1,444,393 | 1,009,101 | 1,067,097 | 1,849,840 | 2,840,541 | 2,056,916 |
| October | 1,102,499 | 1,038,813 | 746,391 | 905,375 | 1,795,509 | 1,711,736 | 1,117,121 | 992,643 | 2,030,276 | 2,591,884 | 2,215,219 |
| November | 945,035 | 676,545 | 969,581 | 1,035,058 | 1,617,498 | 1,194,260 | 1,143,413 | 998,121 | 2,577,052 | 2,352,236 | 2,396,869 |
| December | 1,068,309 | 999,857 | 914,076 | 1,251,809 | 1,980,862 | 1,277,181 | 1,639,878 | 1,341,767 | 3,195,377 | 2,508,998 | 2,269,415 |

Note: Data comprise reported and non-reported round-lot sales and odd-lot purchases and sales.

Source: Unpublished tables furnished by New York Stock Exchange.

k Stock Exchange

| 1954 | 1955 | 1956 | 1957 | 1958 |
|---|---|---|---|---|
| 41,787 | 94,047 | 60,198 | 66,031 | 69,335 |
| 43,075 | 79,765 | 52,379 | 52,236 | 51,841 |
| 51,588 | 83,260 | 78,219 | 45,598 | 56,673 |
| 54,720 | 69,159 | 68,809 | 57,533 | 58,502 |
| 52,295 | 58,308 | 65,801 | 67,441 | 69,192 |
| 52,216 | 69,487 | 49,981 | 58,549 | |
| 63,591 | 63,942 | 56,768 | 61,263 | |
| 70,889 | 53,335 | 59,027 | 52,902 | |
| 51,673 | 67,905 | 46,130 | 45,437 | |
| 57,413 | 60,139 | 50,687 | 80,589 | |
| 71,736 | 56,371 | 55,542 | 58,608 | |
| 92,090 | 64,739 | 55,704 | 68,265 | |
| $ 1,294,161 | $ 3,434,814 | $ 2,462,732 | $ 2,586,220 | $ 2,292,142 |
| 1,458,324 | 3,058,118 | 2,180,736 | 1,981,891 | 1,831,105 |
| 1,750,554 | 3,269,994 | 3,241,995 | 1,710,962 | 2,008,080 |
| 1,877,369 | 2,732,510 | 2,910,434 | 2,259,201 | 2,018,561 |
| 1,844,309 | 2,302,188 | 2,817,462 | 2,805,679 | 2,318,995 |
| 1,819,533 | 2,779,342 | 2,137,898 | 2,516,110 | |
| 2,142,409 | 2,651,851 | 2,428,267 | 2,615,137 | |
| 2,409,895 | 2,222,947 | 2,668,765 | 2,214,707 | |
| 1,849,840 | 2,840,541 | 2,056,916 | 1,778,871 | |
| 2,030,276 | 2,591,884 | 2,215,219 | 2,821,385 | |
| 2,577,052 | 2,352,236 | 2,396,869 | 1,960,249 | |
| 3,195,377 | 2,508,998 | 2,269,415 | 2,200,335 | |

s and sales.

[fol. 3216]

GOVERNMENT TRIAL EXHIBIT No. 359

Volume of General Motors Common Stock Traded on the New York Stock Exchange,
Actual and Adjusted for Stock Splits
Monthly, January 1946-May 1958

| | 1946 | 1947 | 1948 | 1949 | 1950 | 1951 | 1952 | 1953 | 1954 | 1955 |
|---|---|---|---|---|---|---|---|---|---|---|
| | Actual | | | | | | | | | |
| January | 236,600 | 207,800 | 108,000 | 133,900 | 243,000 | 609,200 | 228,000 | 210,200 | 283,700 | 445,500 |
| February | 235,000 | 187,600 | 151,300 | 166,300 | 233,600 | 340,900 | 216,200 | 210,900 | 207,700 | 359,600 |
| March | 195,200 | 193,900 | 137,700 | 123,400 | 175,100 | 339,000 | 269,900 | 229,600 | 260,400 | 461,000 |
| April | 142,900 | 146,100 | 154,700 | 115,600 | 320,900 | 286,000 | 218,800 | 305,900 | 296,800 | 322,800 |
| May | 187,700 | 199,300 | 241,700 | 112,200 | 388,200 | 443,600 | 182,200 | 156,900 | 303,000 | 244,400 |
| June | 131,900 | 142,000 | 160,700 | 145,000 | 681,600 | 261,500 | 199,000 | 234,300 | 242,100 | 380,800 |
| July | 151,900 | 186,300 | 141,900 | 134,800 | 589,200 | 218,700 | 161,200 | 203,300 | 328,800 | 628,200 |
| August | 128,700 | 98,500 | 127,900 | 124,700 | 384,300 | 256,800 | 158,700 | 179,300 | 270,200 | 278,300 |
| September | 357,300 | 104,900 | 131,900 | 147,100 | 275,900[1] | 204,500 | 168,700 | 218,000 | 276,700 | 1,023,000[2] |
| October | 260,900 | 193,500 | 165,400 | 192,100 | 817,000[1] | 288,500 | 178,200 | 176,200 | 258,300 | 840,100[2] |
| November | 214,600 | 89,100 | 264,000 | 311,300 | 868,700 | 190,500 | 204,000 | 167,200 | 268,000 | 1,255,400[2] |
| December | 268,800 | 145,200 | 141,600 | 189,100 | 684,200 | 196,900 | 243,500 | 159,300 | 272,100 | 875,000 |
| | Adjusted[3] | | | | | | | | | |
| January | 1,419,600 | 1,246,800 | 648,000 | 803,400 | 1,458,000 | 1,827,600 | 684,000 | 630,600 | 851,100 | 1,336,500 |
| February | 1,410,000 | 1,125,600 | 907,800 | 997,800 | 1,401,600 | 1,022,700 | 648,600 | 632,700 | 623,100 | 1,078,800 |
| March | 1,171,200 | 1,163,400 | 826,200 | 740,400 | 1,050,600 | 1,017,000 | 809,700 | 688,800 | 781,200 | 1,383,000 |
| April | 857,400 | 876,600 | 928,200 | 693,600 | 1,925,400 | 858,000 | 656,400 | 917,700 | 890,400 | 968,400 |
| May | 1,126,200 | 1,195,800 | 1,450,200 | 673,200 | 2,329,200 | 1,330,800 | 546,600 | 470,700 | 909,000 | 733,200 |
| June | 791,400 | 852,000 | 964,200 | 870,000 | 4,089,600 | 784,500 | 597,000 | 702,900 | 726,300 | 1,142,400 |
| July | 929,400 | 1,117,800 | 851,400 | 808,800 | 3,535,200 | 656,100 | 483,600 | 609,900 | 986,400 | 1,884,600 |
| August | 772,200 | 591,000 | 767,400 | 748,200 | 2,305,800 | 770,400 | 476,100 | 537,900 | 810,600 | 834,900 |
| September | 2,143,800 | 629,400 | 791,400 | 882,600 | 1,574,400 | 613,500 | 506,100 | 654,000 | 830,100 | 2,223,200 |
| October | 1,565,400 | 1,161,600 | 992,400 | 1,152,600 | 2,511,600 | 861,000 | 534,600 | 528,600 | 774,900 | 1,488,500 |
| November | 1,287,600 | 534,600 | 1,584,000 | 1,867,800 | 2,606,100 | 571,500 | 612,000 | 501,600 | 804,000 | 1,352,600 |
| December | 1,612,800 | 871,200 | 849,600 | 1,134,600 | 2,052,600 | 590,700 | 730,500 | 477,900 | 816,300 | 875,000 |

Note: Data comprise reported round-lot sales.

[1] 2-for-1 split of $10 par common stock effective October 2, 1950. Volume includes following stock traded:

| | $10 Par Stock | $5 Par Stock |
|---|---|---|
| September 1950 | 248,900 | 27,000 |
| October 1950 | 20,200 | 796,800 |

[2] 3-for-1 split of $5 par common stock effective Volume includes following stock traded:

| | $5 Par Stock |
|---|---|
| September 1955 | 600,100 |
| October 1955 | 324,200 |
| November 1955 | 48,600 |

[3] Data adjusted for splits by multiplying $10 pa and $5 par stock traded by 3.

Source: William B. Dana Company, Bank and Quotation Record, monthly issues, 1946-1958.

SCHEDULE 31

2808B

fork Stock Exchange,

| 1953 | 1954 | 1955 | 1956 | 1957 | 1958 |
|---|---|---|---|---|---|
| 210,200 | 283,700 | 445,500 | 1,215,300 | 567,900 | 574,500 |
| 210,900 | 207,700 | 359,600 | 714,700 | 643,200 | 454,100 |
| 229,600 | 260,400 | 461,000 | 659,500 | 398,600 | 479,700 |
| 305,900 | 296,800 | 322,800 | 611,000 | 474,900 | 550,400 |
| 156,900 | 303,000 | 244,400 | 919,800 | 496,700 | 469,800 |
| 234,300 | 242,100 | 380,800 | 589,200 | 468,500 | |
| 203,300 | 328,800 | 628,200 | 490,300 | 612,500 | |
| 179,300 | 270,200 | 278,300 | 445,100 | 461,900 | |
| 218,000 | 276,700 | 1,023,000a/ | 423,000 | 501,900 | |
| 176,200 | 258,300 | 840,100a/ | 460,400 | 777,900 | |
| 167,200 | 268,000 | 1,255,400a/ | 461,100 | 624,000 | |
| 159,300 | 272,100 | 875,000 | 410,400 | 662,400 | |
| 630,600 | 851,100 | 1,336,500 | 1,215,300 | 567,900 | 574,500 |
| 632,700 | 623,100 | 1,078,800 | 714,700 | 643,200 | 454,100 |
| 688,800 | 781,200 | 1,383,000 | 659,500 | 398,600 | 479,700 |
| 917,700 | 890,400 | 968,400 | 611,000 | 474,900 | 550,400 |
| 470,700 | 909,000 | 733,200 | 919,800 | 496,700 | 469,800 |
| 702,900 | 726,300 | 1,142,400 | 589,200 | 468,500 | |
| 609,900 | 986,400 | 1,884,600 | 490,300 | 612,500 | |
| 537,900 | 810,600 | 834,900 | 445,100 | 461,900 | |
| 654,000 | 830,100 | 2,223,200 | 423,000 | 501,900 | |
| 528,600 | 774,900 | 1,488,500 | 460,400 | 777,900 | |
| 501,600 | 804,000 | 1,352,600 | 461,100 | 624,000 | |
| 477,900 | 816,300 | 875,000 | 410,400 | 662,400 | |

plit of $5 par common stock effective September 30, 1955.
eluder following stock traded:

| | $5 Par Stock | $1-2/3 Par Stock |
|---|---|---|
| mber 1955 | 600,100 | 422,900 |
| ber 1955 | 324,200 | 515,900 |
| mber 1955 | 48,600 | 1,206,800 |

ted for splits by multiplying $10 par stock traded by 6
r stock traded by 3.

nthly issues, 1946-1958.

[fol. 3217] GOVERNMENT TRIAL EXHIBIT No. 362

GM Shareholders
Annually, 1946 through 1957

| End of Year | Number of Shareholders |
|---|---|
| 1946 | 430,384 |
| 1947 | 436,410 |
| 1948 | 433,945 |
| 1949 | 434,075 |
| 1950 | 445,573 |
| 1951 | 478,924 |
| 1952 | 487,624 |
| 1953 | 494,632 |
| 1954 | 487,639 |
| 1955 | 565,408 |
| 1956 | 656,076 |
| 1957 | 717,746 |

Source: GM Annual Reports.

---

[fol. 3218] GOVERNMENT TRIAL EXHIBIT No. 363

Comparison of Annual GM Turnover with NYSE Turnover Annually
1946 through 1957

| Year | GM Shares Traded | GM Average Shares Outstanding[1] | GM Turnover | NYSE Market Turnover |
|---|---|---|---|---|
| | thousands | | (1) + (2) | |
| | (1) | (2) | (3) | (4) |
| 1946 | 23,893 | 264,626 | 9.03% | 29.8% |
| 1947 | 16,513 | 264,626 | 6.24 | 18.3 |
| 1948 | 16,700 | 264,626 | 6.31 | 20.0 |
| 1949 | 16,832 | 264,626 | 6.36 | 16.9 |
| 1950 | 37,915 | 264,626 | 14.33 | 29.0 |
| 1951 | 15,837 | 264,626 | 5.98 | 23.3 |
| 1952 | 10,477 | 264,626 | 3.96 | 16.0 |
| 1953 | 10,576 | 265,084 | 3.99 | 15.7 |
| 1954 | 13,519 | 265,541 | 5.09 | 23.1 |
| 1955 | 20,757 | 272,188 | 7.63 | 23.4 |
| 1956 | 10,163 | 279,328 | 3.64 | 16.9 |
| 1957 | 9,463 | 280,405 | 3.37 | 15.4 |

[1] Adjusted for stock splits.

Source: (1) Schedule 31 and Exhibit VII. (Govt. Exs. 359 and 361)
(2) Schedule 34. (Govt. Ex. 364)
(4) Exhibit III. (Govt. Ex. 340)

## [fol. 3219] GOVERNMENT TRIAL EXHIBIT NO. 364

Number of Shares of General Motors Common Stock
Listed on the New York Stock Exchange
as of the End of the Month
January 1946–May 1958

| | Actual | Adjusted[3] |
|---|---|---|
| January 1946–September 1950 | 44,104,340 | 284,626,040 |
| October 1950–August 1953 | 88,208,680[1] | 264,626,040 |
| September 1953–January 1955 | 88,513,817 | 265,541,451 |
| February 1955 | 90,567,050 | 271,701,150 |
| March 1955–September 1955 | 92,894,500 | 278,683,500 |
| October 1955–November 1955 | 278,761,438[2] | 278,761,438 |
| December 1955 | 278,834,250 | 278,834,250 |

| | Actual and Adjusted | | |
|---|---|---|---|
| | 1956 | 1957 | 1958 |
| January | 278,914,053 | 279,921,626 | 281,145,494 |
| February | 278,996,548 | 280,017,468 | 281,255,177 |
| March | 279,078,858 | 280,112,470 | 281,365,162 |
| April | 279,160,051 | 280,207,472 | 281,507,889 |
| May | 279,242,414 | 280,315,240 | 281,607,774 |
| June | 279,328,518 | 280,399,938 | |
| July | 279,417,404 | 280,399,938 | |
| August | 279,495,442 | 280,589,871 | |
| September | 279,572,660 | 280,672,482 | |
| October | 279,657,443 | 280,785,993 | |
| November | 279,738,205 | 280,883,182 | |
| December | 279,821,123 | 280,989,096 | |

[1] 2-for-1 split of $10 par common stock.
[2] 3-for-1 split of $5 par common stock.
[3] Data adjusted for splits by multiplying $10 par stock by 6 and $5 par stock by 3.

Source: Unpublished tables supplied by the New York Stock Exchange.

---

## [fol. 3220] GOVERNMENT TRIAL EXHIBIT NO. 366

Institutional Purchases and Sales of GM Shares
January 1953 through October 1955

| | GM Shares | |
|---|---|---|
| | Purchases | Sales |
| Open-End Investment Companies | 417,520 | 140,935 |
| Closed-End Investment Companies | 41,100 | 19,700 |
| Corporate Pension Funds | 165,260 | 20,600 |
| Life Insurance Companies[1] | 96,830 | 2,100 |
| Casualty and Surety Insurance Companies | 39,595 | 10,000 |
| Fire Insurance Companies | 34,958 | 11,900 |
| Bank Administered Common Trust Funds | 30,689 | 4,800 |
| Total | 825,952 | 210,035 |

[1] Data for life insurance companies reported for 33-month period, January 1953–September 1955.

[fol. 3221] GOVERNMENT TRIAL EXHIBIT No. 367

Institutional Purchases and Sales of GM Shares (In Dollars)
January 1953 through October 1955

| | GM Shares | |
|---|---|---|
| | Purchases | Sales |
| | thousand dollars | |
| Open-End Investment Companies | $34,837 | $17,058 |
| Closed-End Investment Companies | 3,437 | 2,002 |
| Corporate Pension Funds | 13,214 | 2,224 |
| Life Insurance Companies[1] | 7,894 | 141 |
| Casualty and Surety Insurance Companies | 3,039 | 895 |
| Fire Insurance Companies | 3,138 | 1,081 |
| Bank Administered Common Trust Funds | 2,456 | 387 |
| Total | $67,925 | $23,789[2] |

[1] Data for life insurance companies reported for 33-month period, January 1953–September 1955.
[2] Figures do not add to total indicated because of rounding.

Source: *Ibid.*, pp. 182–183.

---

[fol. 3222] GOVERNMENT TRIAL EXHIBIT No. 368

GM Shares Distributed to Employees
Annually, 946 through 1957

| Year | GM Shares[1] | |
|---|---|---|
| | Purchased by Company | Distributed to Employees |
| 1946 | 6,000 | 447,726 |
| 1947 | 591,762 | — |
| 1948 | 745,230 | 594,186 |
| 1949 | 1,060,836 | 850,194 |
| 1950 | 1,911,624 | 982,416 |
| 1951 | 1,429,224 | 937,758 |
| 1952 | 1,647,021 | 1,151,799 |
| 1953 | 1,623,927 | 1,396,746 |
| 1954 | 1,566,621 | 1,653,330 |
| 1955 | 1,255,790 | 1,537,298 |
| 1956 | 1,024,236 | 1,397,489 |
| 1957 | 1,024,751 | 1,249,936 |
| Total | 13,887,022 | 12,198,878 |

[1] Adjusted for stock splits.

Source: GM Annual Reports.

[fol. 3223] GOVERNMENT TRIAL EXHIBIT No. 369

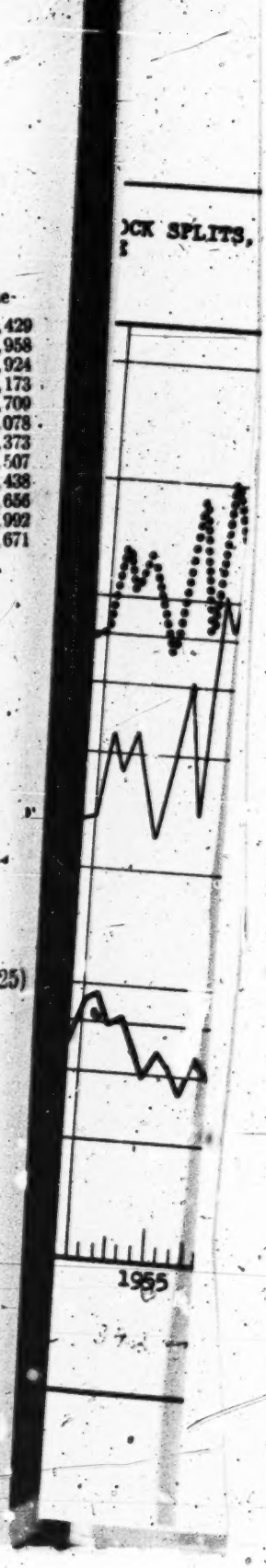
Number and Market Value of GM Shares Held as Treasury Stock Annually, 1946 through 1957

| End of Year | Number of GM Shares[1] | Value |
|---|---|---|
| 1946 | 47,700 | $ 556,429 |
| 1947 | 639,462 | 6,332,958 |
| 1948 | 790,506 | 7,805,924 |
| 1949 | 1,001,148 | 10,334,173 |
| 1950 | 1,930,3[illegible] | 28,997,709 |
| 1951 | 2,421,8[illegible] | 39,074,078 |
| 1952 | 2,917,044 | 51,939,373 |
| 1953 | 3,144,225 | 60,208,507 |
| 1954 | 3,057,516 | 68,861,438 |
| 1955 | 2,776,008 | 84,065,656 |
| 1956 | 2,402,755 | 89,291,992 |
| 1957 | 2,177,570 | 87,172,671 |

[1] Adjusted for stock splits.

Source: GM Annual Reports.

(Here follow 2 Photolithographs, side folios 3224, 3225)



[fol. 3226] GOVERNMENT TRIAL EXHIBIT NO. 374

Monthly GM Adjusted Volume, Yearly High and Low; and Monthly GM Volume as Per Cent of Total Shares Traded on NYSE, Yearly High and Low 1946 through 1957

| Year | GM Adjusted Volume | | |
|---|---|---|---|
| | Annual Total | High | Low |
| | | thousand shares | |
| 1946 | 15,087 | 2,143.8 | 772.2 |
| 1947 | 11,366 | 1,246.8 | 534.6 |
| 1948 | 11,561 | 1,584.0 | 648.0 |
| 1949 | 11,373 | 1,867.8 | 673.2 |
| 1950 | 26,840 | 4,089.6 | 1,050.6 |
| 1951 | 10,904 | 1,827.6 | 571.5 |
| 1952 | 7,285 | 809.7 | 476.1 |
| 1953 | 7,353 | 917.7 | 470.7 |
| 1954 | 9,803 | 986.4 | 623.1 |
| 1955 | 15,301 | 2,223.2 | 733.2 |
| 1956 | 7,400 | 1,215.3 | 410.4 |
| 1957 | 6,690 | 777.9 | 398.6 |

Source: Schedule 31.

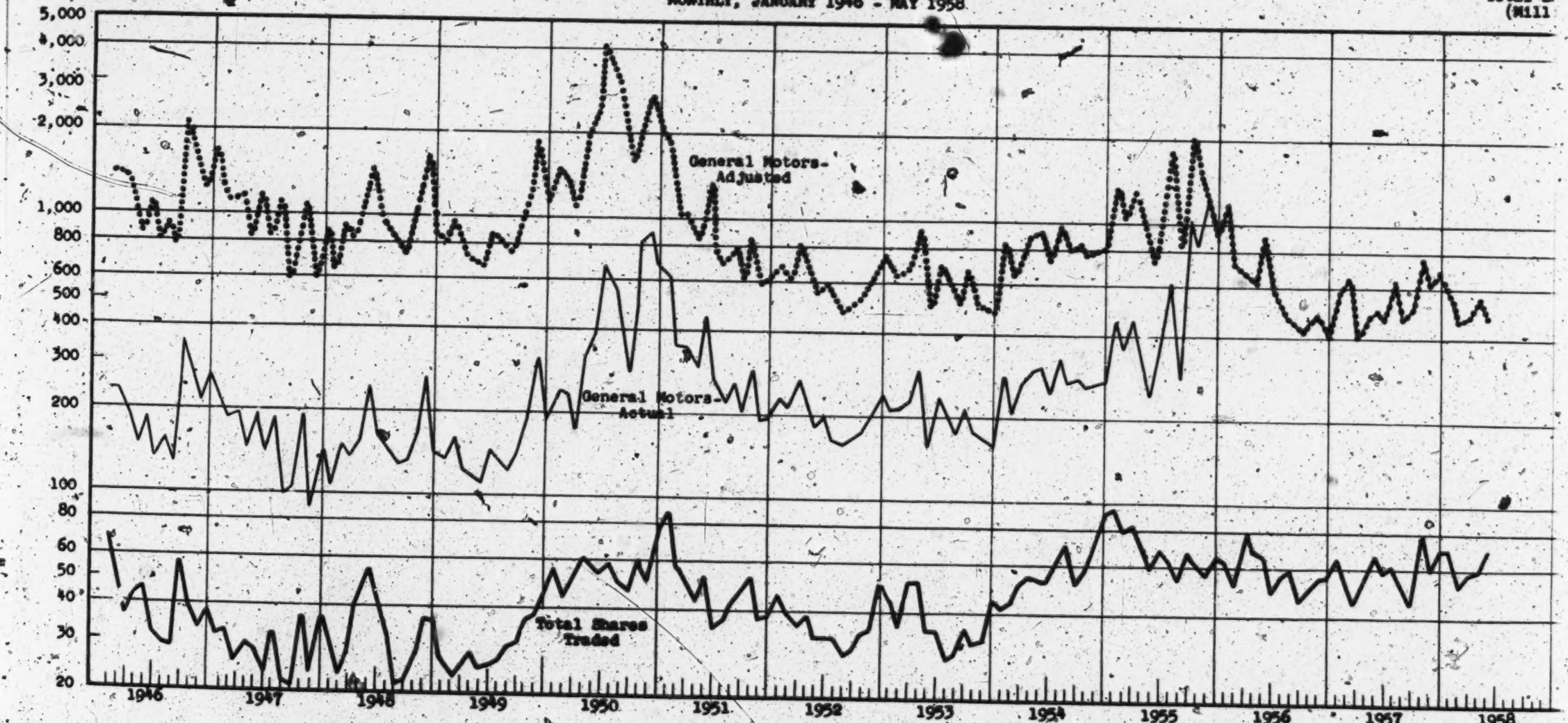
| Year | Proportion of Total Market Volume Accounted for by GM Sales | | |
|---|---|---|---|
| | Annual Total | High | Low |
| 1946 | 3.01% | 4.336% | 1.951% |
| 1947 | 3.38 | 4.613 | 2.377 |
| 1948 | 2.94 | 4.370 | 2.121 |
| 1949 | 3.22 | 5.125 | 2.385 |
| 1950 | 4.10 | 7.569 | 2.079 |
| 1951 | 1.88 | 2.530 | 1.327 |
| 1952 | 1.69 | 2.313 | 1.434 |
| 1953 | 1.64 | 2.239 | 1.090 |
| 1954 | 1.39 | 2.037 | 0.886 |
| 1955 | 1.86 | 3.274 | 1.257 |
| 1956 | 1.06 | 2.019 | 0.737 |
| 1957 | 0.94 | 1.231 | 0.736 |

Source: (1) Derived from Schedules 20 and 31. (Govt. Exs. 342 and 359).
(2) and (3) Schedule 33. (Govt. Ex. 373).

GOVERNMENT TRIAL EXHIBIT No. 371

VOLUME OF GENERAL MOTORS COMMON STOCK TRADED, ACTUAL AND ADJUSTED FOR STOCK SPLITS, AND TOTAL VOLUME OF SHARES TRADED ON THE NEW YORK STOCK EXCHANGE

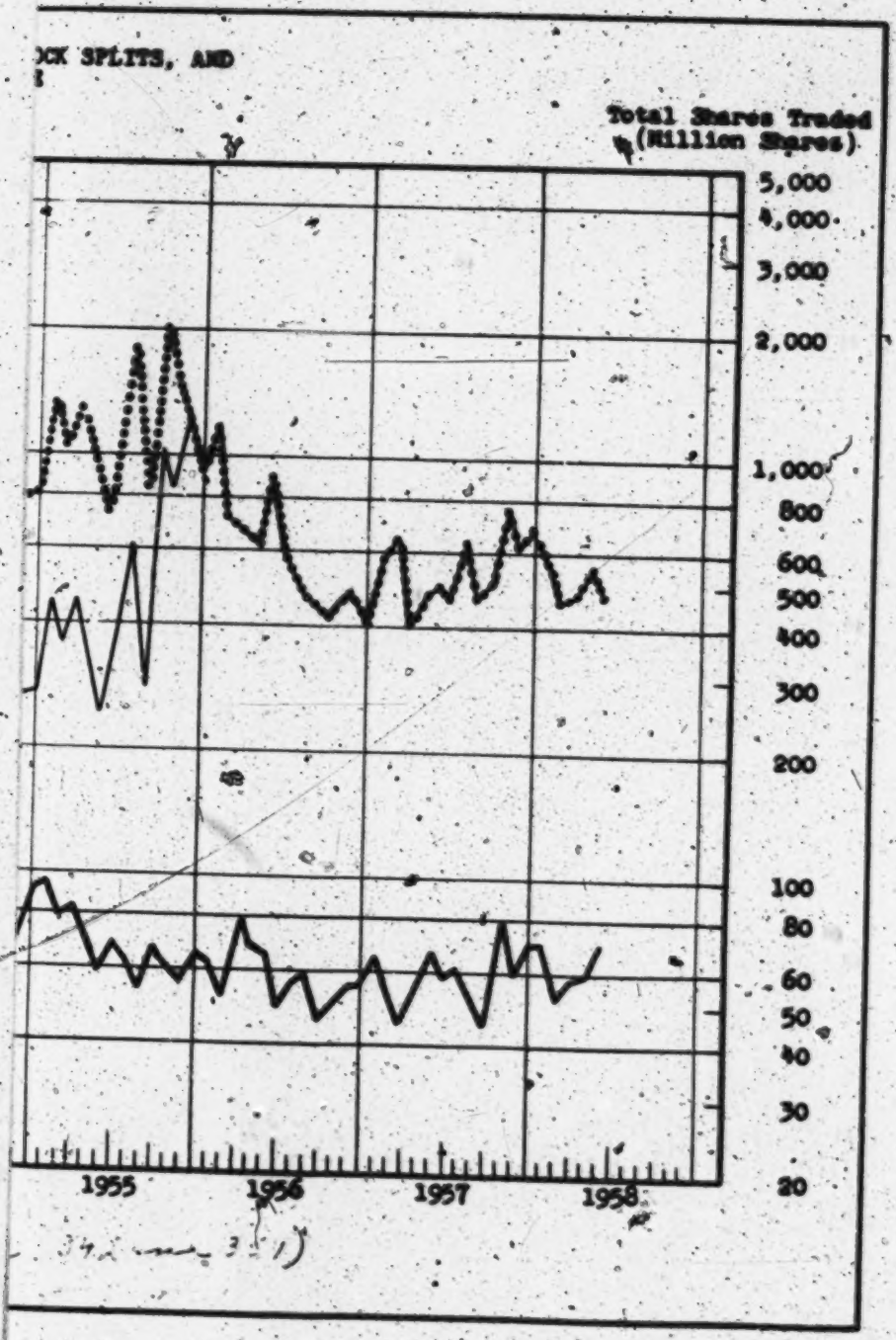
MONTHLY, JANUARY 1946 - MAY 1958




Source: Schedules 20 and 31. (Plaintiff's Exhibit 34 and 34-1)

EXHIB

CK SPLITS, AND



GOVERNMENT TRIAL EXHIBIT NO. 373

Volume of General Motors and du Pont Common Stock Traded, Adjusted for Stock Splits, as a Per Cent of Total Shares Traded on the New York Stock Exchange Monthly, January 1946-May 1958

| | 1946 | 1947 | 1948 | 1949 | 1950 | 1951 | 1952 | 1953 | 1954 | 1955 | 1956 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Motors as a Per Cent of New York Stock Exchange Volume Traded | | | | | | | | | | |
| January | 2.052 % | 3.917 % | 2.320 % | 3.065 % | 2.664 % | 2.034 % | 1.484 % | 1.409 % | 2.037 % | 1.421 % | 2.019 % |
| February | 2.719 | 3.467 | 3.949 | 4.519 | 3.238 | 1.775 | 1.677 | 1.768 | 1.447 | 1.352 | 1.364 |
| March | 3.274 | 4.613 | 2.982 | 2.985 | 2.079 | 2.154 | 2.313 | 1.345 | 1.514 | 1.661 | 0.843 |
| April | 1.951 | 3.022 | 2.121 | 2.490 | 3.173 | 2.013 | 1.692 | 1.797 | 1.627 | 1.400 | 0.888 |
| May | 2.472 | 4.424 | 2.652 | 2.804 | 4.149 | 2.530 | 1.690 | 1.367 | 1.738 | 1.257 | 1.398 |
| June | 2.476 | 3.718 | 2.270 | 3.579 | 7.569 | 2.253 | 1.860 | 2.045 | 1.391 | 1.644 | 1.179 |
| July | 3.249 | 3.487 | 2.606 | 3.142 | 6.238 | 1.786 | 1.506 | 2.239 | 1.551 | 2.947 | 0.864 |
| August | 2.725 | 2.744 | 3.649 | 2.609 | 4.633 | 1.795 | 1.697 | 1.907 | 1.143 | 1.565 | 0.754 |
| September | 3.720 | 3.116 | 3.641 | 2.980 | 3.394 | 1.327 | 1.700 | 1.845 | 1.606 | 3.274 | 0.917 |
| October | 4.086 | 3.184 | 3.794 | 3.195 | 4.145 | 1.604 | 1.592 | 1.694 | 1.350 | 2.475 | 0.908 |
| November | 3.847 | 2.377 | 4.370 | 5.125 | 5.091 | 1.532 | 1.780 | 1.580 | 1.121 | 2.399 | 0.830 |
| December | 4.336 | 2.466 | 2.404 | 2.385 | 2.881 | 1.546 | 1.434 | 1.090 | 0.886 | 1.352 | 0.737 |
| | du Pont as a Per Cent of New York Stock Exchange Volume Traded | | | | | | | | | | |
| January | 0.138 % | 0.215 % | 0.259 % | 0.520 % | 0.334 % | 0.201 % | 0.181 % | 0.196 % | 0.190 % | 0.098 % | 0.147 % |
| February | 0.146 | 0.200 | 0.296 | 0.522 | 0.317 | 0.169 | 0.190 | 0.220 | 0.151 | 0.079 | 0.204 |
| March | 0.188 | 0.270 | 0.306 | 0.703 | 0.375 | 0.196 | 0.186 | 0.169 | 0.152 | 0.089 | 0.108 |
| April | 0.202 | 0.248 | 0.324 | 0.431 | 0.255 | 0.225 | 0.196 | 0.204 | 0.152 | 0.082 | 0.137 |
| May | 0.184 | 0.305 | 0.260 | 0.494 | 0.295 | 0.211 | 0.250 | 0.229 | 0.128 | 0.107 | 0.141 |
| June | 0.221 | 0.407 | 0.216 | 0.635 | 0.475 | 0.225 | 0.226 | 0.185 | 0.211 | 0.103 | 0.149 |
| July | 0.165 | 0.253 | 0.212 | 0.517 | 0.479 | 0.292 | 0.239 | 0.293 | 0.170 | 0.178 | 0.109 |
| August | 0.165 | 0.241 | 0.274 | 0.752 | 0.355 | 0.225 | 0.149 | 0.344 | 0.091 | 0.133 | 0.093 |
| September | 0.265 | 0.293 | 0.344 | 0.655 | 0.271 | 0.142 | 0.251 | 0.197 | 0.142 | 0.158 | 0.146 |
| October | 0.273 | 0.268 | 0.589 | 0.622 | 0.269 | 0.205 | 0.228 | 0.400 | 0.195 | 0.161 | 0.133 |
| November | 0.252 | 0.253 | 0.289 | 0.707 | 0.286 | 0.234 | 0.294 | 0.339 | 0.128 | 0.275 | 0.174 |
| December | 0.187 | 0.217 | 0.365 | 0.375 | 0.218 | 0.216 | 0.151 | 0.167 | 0.082 | 0.116 | 0.194 |

Source: Derived from data in Schedules 30, 31, and 32. (Govt. Exs. 342, 357 en

SCHEDULE 32

or Stock Splits,
xchange

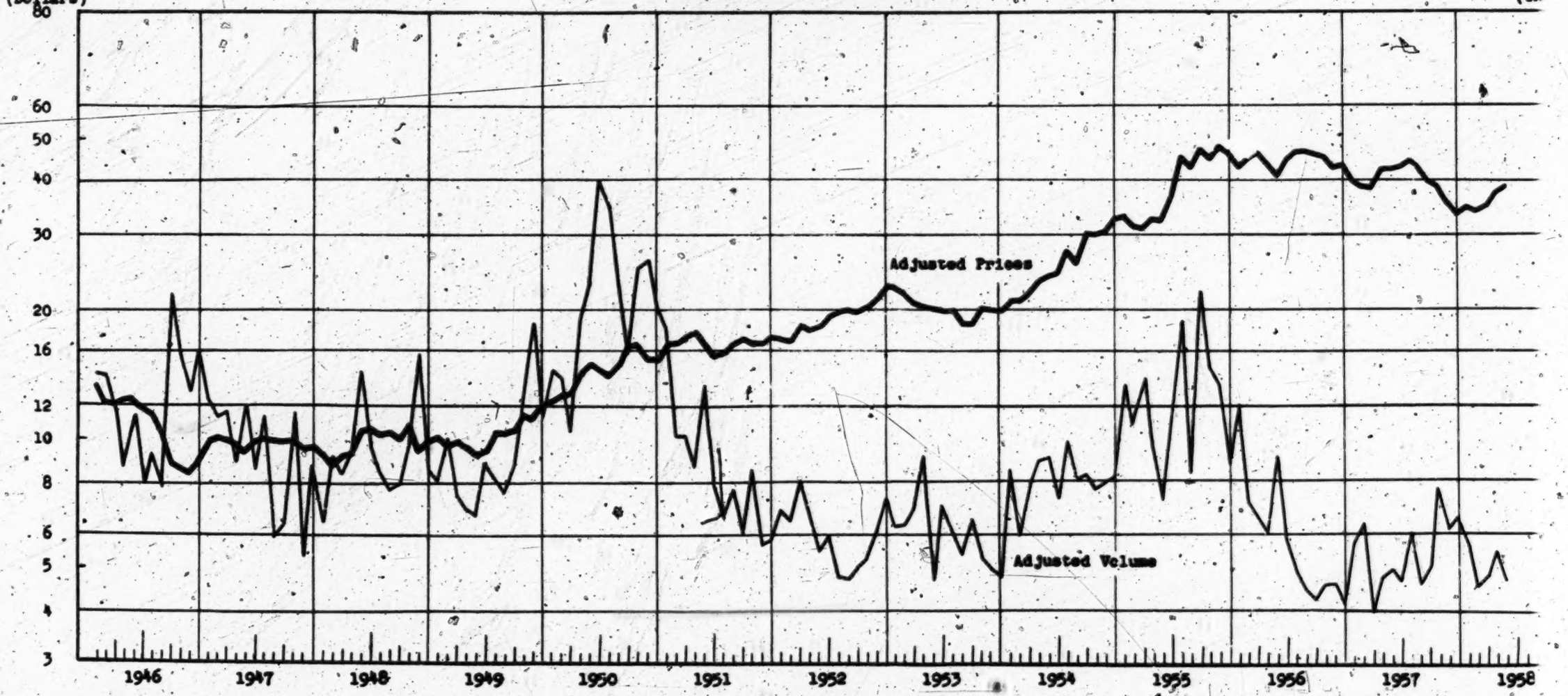
| 1954 | 1955 | 1956 | 1957 | 19 |
|---|---|---|---|---|
| **Volume Traded** | | | | |
| 2.037 % | 1.421 % | 2.019 % | 0.860 % | 0.32 % |
| 1.447 | 1.352 | 1.364 | 1.231 | 0.57 |
| 1.514 | 1.661 | 0.843 | 0.874 | 0.34 |
| 1.627 | 1.400 | 0.888 | 0.825 | 0.94 |
| 1.738 | 1.857 | 1.398 | 0.736 | 0.57 |
| 1.391 | 1.644 | 1.179 | 0.800 | |
| 1.551 | 2.947 | 0.864 | 1.000 | |
| 1.143 | 1.565 | 0.754 | 0.873 | |
| 1.606 | 3.274 | 0.917 | 1.105 | |
| 1.350 | 2.475 | 0.908 | 0.965 | |
| 1.121 | 2.399 | 0.830 | 1.065 | |
| 0.886 | 1.352 | 0.737 | 0.970 | |
| **e Traded** | | | | |
| 0.190 % | 0.098 % | 0.147 % | 0.102 % | 0.09 % |
| 0.151 | 0.079 | 0.204 | 0.124 | 0.09 |
| 0.152 | 0.089 | 0.108 | 0.115 | 0 11 |
| 0.152 | 0.082 | 0.137 | 0.132 | 0 1 |
| 0.128 | 0.107 | 0.141 | 0.109 | 0 1 |
| 0.211 | 0.103 | 0.149 | 0.114 | |
| 0.170 | 0.178 | 0.109 | 0.118 | |
| 0.091 | 0.133 | 0.093 | 0.123 | |
| 0.142 | 0.158 | 0.146 | 0.124 | |
| 0.105 | 0.161 | 0.133 | 0.123 | |
| 0.128 | 0.275 | 0.174 | 0.113 | |
| 0.082 | 0.116 | 0.194 | 0.081 | |

(Govt. Exs 342, 357 and 387)

GOVERNMENT TRIAL EXHIBIT No. 375

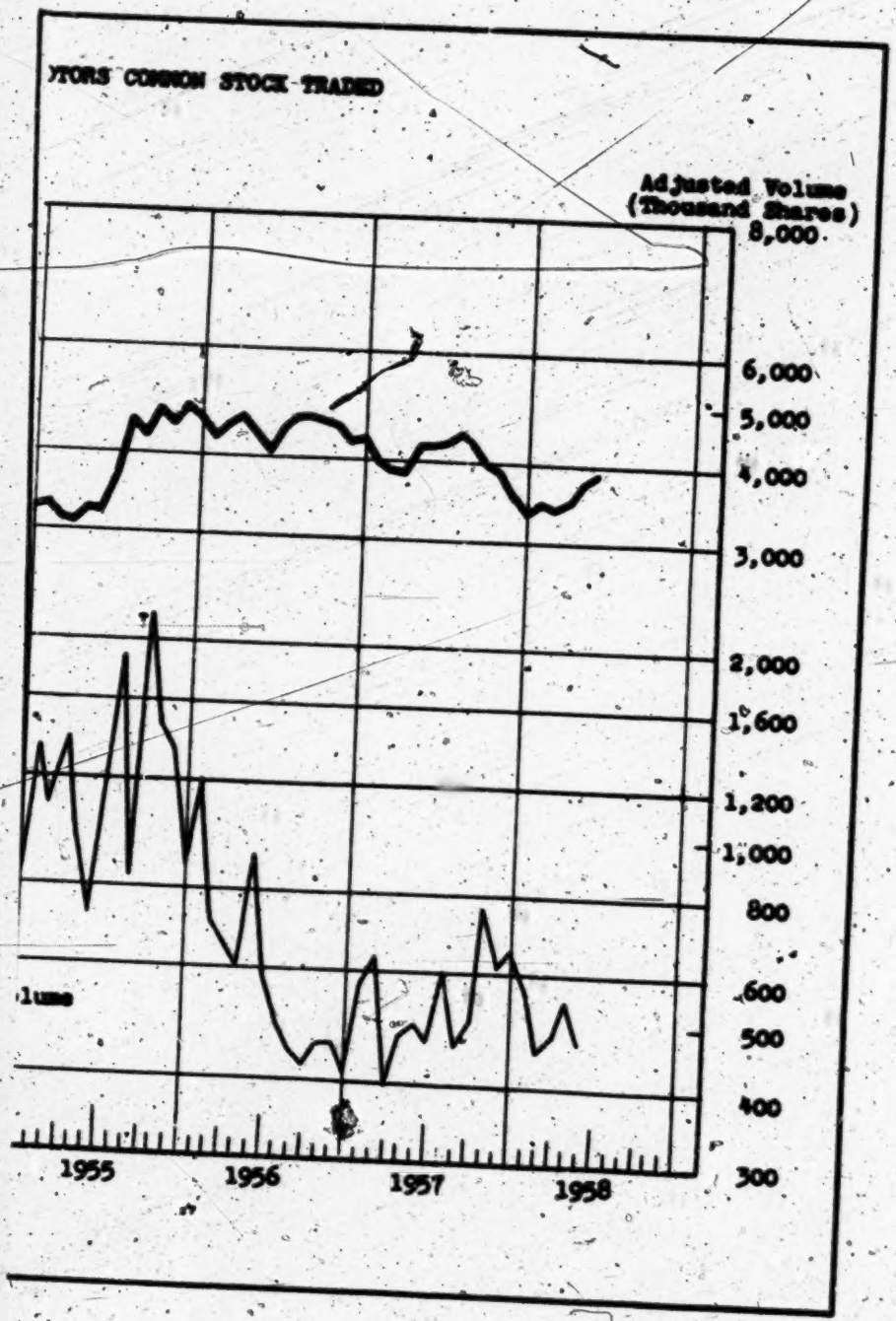
COMPARISON OF CLOSING PRICES OF GENERAL MOTORS COMMON STOCK WITH VOLUME OF GENERAL MOTORS COMMON STOCK TRADED
(ADJUSTED FOR STOCK SPLITS)

MONTHLY, JANUARY 1946 - MAY 1958




Source: Schedules 11 and 31.

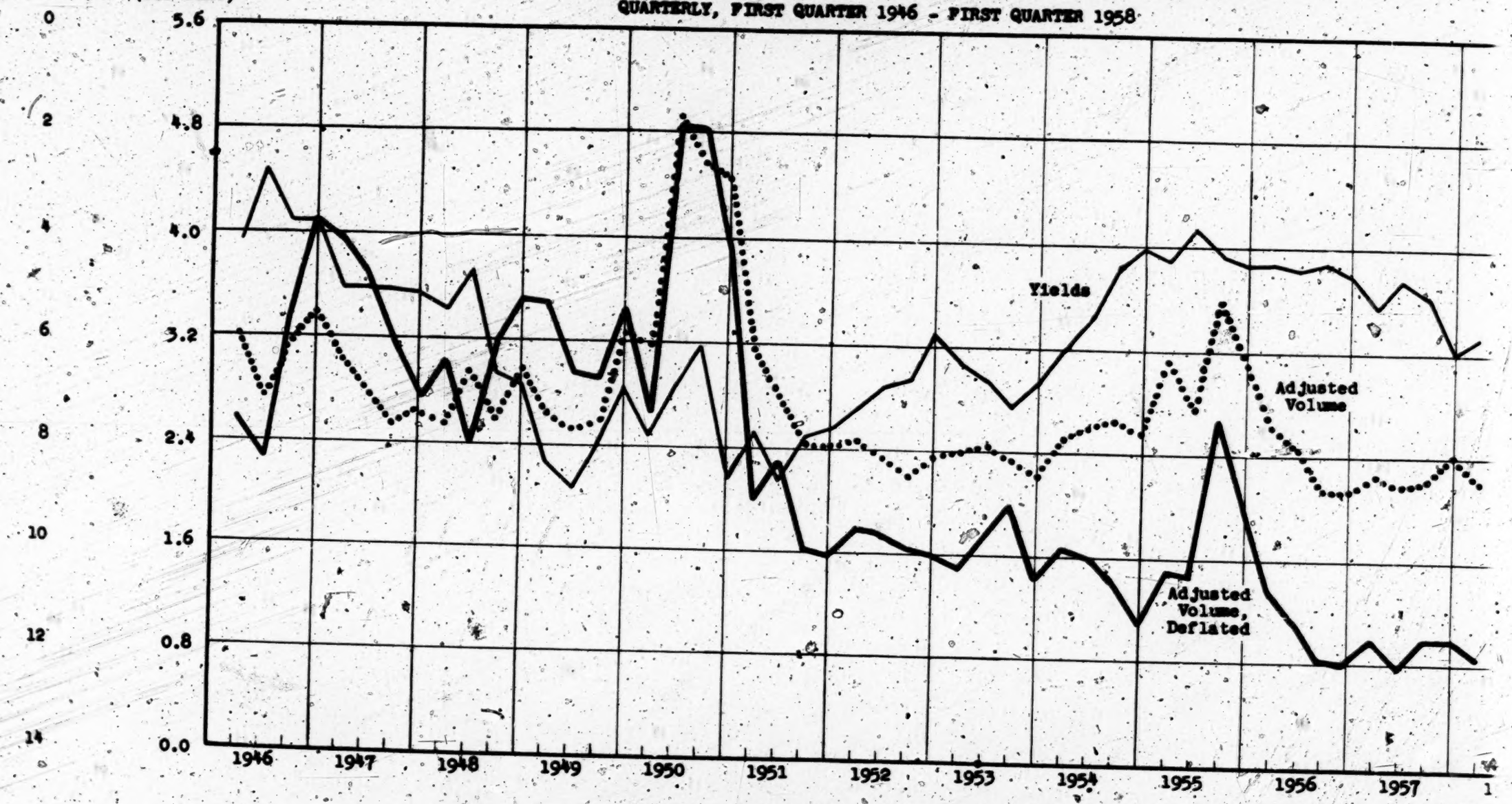
EXHIBIT 27


YTORS COMMON STOCK TRADED
Adjusted Volume
(Thousand Shares)
8,000
6,000
5,000
4,000
3,000
2,000
1,600
1,200
1,000
800
600
500
400
300
lume
1955
1956
1957
1958

GOVERNMENT TRIAL EXHIBIT No. 379

VOLUME OF GENERAL MOTORS COMMON STOCK TRADED ADJUSTED FOR STOCK SPLITS; DEFLATED BY TOTAL SHARES TRADED ON THE NEW YORK STOCK EXCHANGE; AND YIELDS ON GENERAL MOTORS COMMON STOCK

QUARTERLY, FIRST QUARTER 1946 - FIRST QUARTER 1958

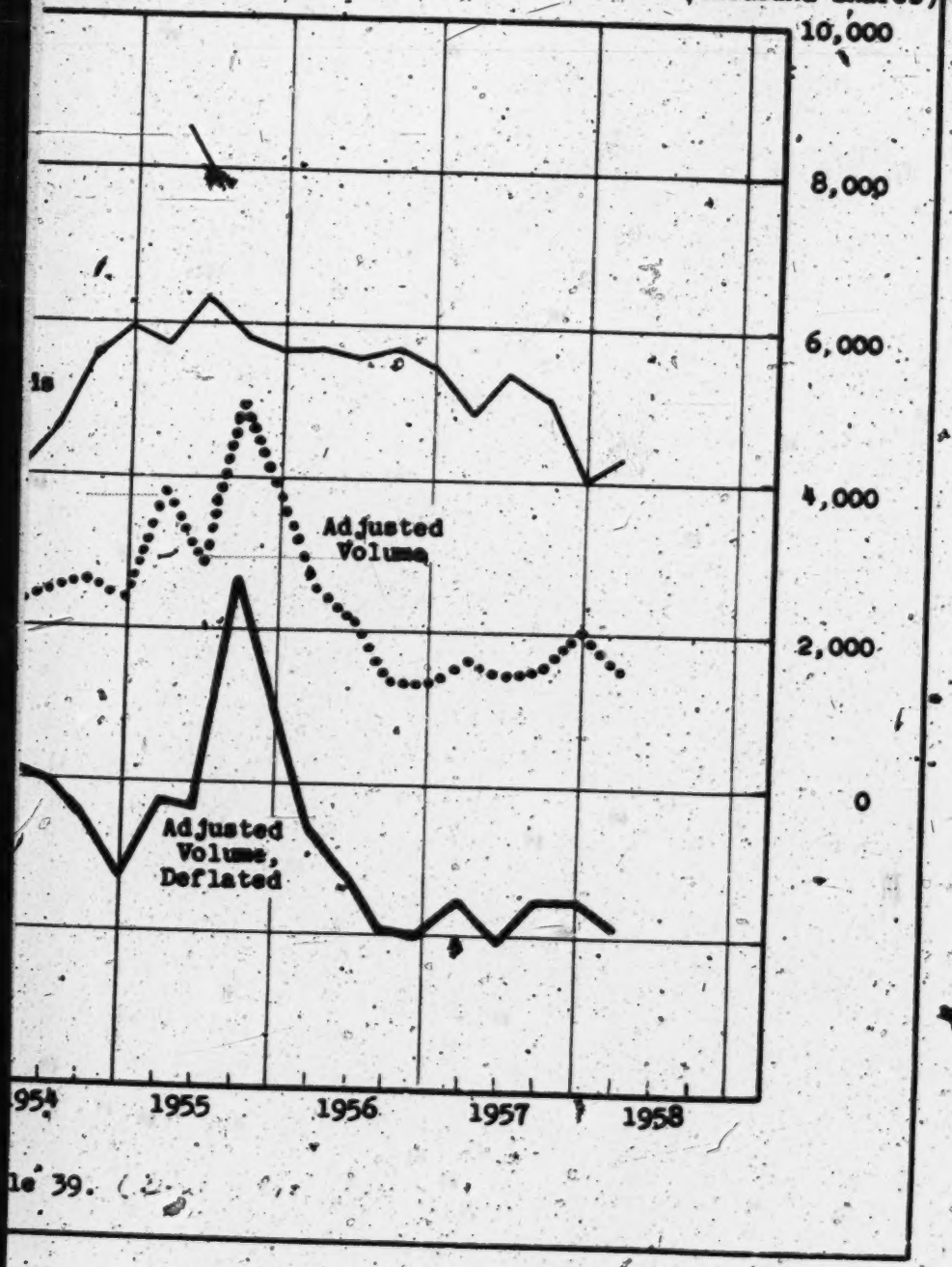



Source: Schedule 15, Column (7), and Schedule 39.

EXHIBIT 29
2816

; DEFLATED BY TOTAL SHARES TRADED
TORS COMMON STOCK

1958




le 39.

[fol. 3229]

GOVERNMENT TRIAL EXHIBIT No. 380

## Volume of General Motors Common Stock Traded, Adjusted for Stock Splits as a Per Cent of Total Shares Traded on the New York Stock Exchange Quarterly, First Quarter 1946-First Quarter 1958

| Year and Quarter | | General Motors Adjusted Volume | Total Volume of Shares Traded | General Motors as a Per Cent of Total |
|---|---|---|---|---|
| | | ----------thousand shares---------- | | (1) ÷ (2) |
| | | (1) | (2) | (3) |
| 1946 | First | 4,001 | 156,809 | 2.55 % |
| | Second | 2,775 | 121,471 | 2.28 |
| | Third | 3,845 | 114,568 | 3.36 |
| | Fourth | 4,466 | 108,972 | 4.10 |
| 1947 | First | 3,536 | 89,517 | 3.95 % |
| | Second | 2,924 | 78,949 | 3.70 |
| | Third | 2,338 | 73,788 | 3.17 |
| | Fourth | 2,567 | 94,298 | 2.72 |
| 1948 | First | 2,382 | 78,634 | 3.03 % |
| | Second | 3,343 | 140,934 | 2.37 |
| | Third | 2,410 | 75,444 | 3.19 |
| | Fourth | 3,426 | 97,742 | 3.51 |
| 1949 | First | 2,542 | 73,097 | 3.48 % |
| | Second | 2,237 | 76,166 | 2.94 |
| | Third | 2,440 | 84,034 | 2.90 |
| | Fourth | 4,155 | 120,079 | 3.46 |
| 1950 | First | 3,910 | 148,566 | 2.63 % |
| | Second | 8,344 | 170,853 | 4.88 |
| | Third | 7,415 | 152,828 | 4.85 |
| | Fourth | 7,170 | 183,033 | 3.92 |
| 1951 | First | 3,867 | 194,719 | 1.99 % |
| | Second | 2,973 | 130,037 | 2.29 |
| | Third | 2,040 | 125,895 | 1.62 |
| | Fourth | 2,023 | 129,191 | 1.57 |

| Year and Quarter | | General Motors Adjusted Volume |
|---|---|---|
| | | ----------thousand |
| | | (1) |
| 1952 | First | 2,142 |
| | Second | 1,800 |
| | Third | 1,466 |
| | Fourth | 1,877 |
| 1953 | First | 1,952 |
| | Second | 2,091 |
| | Third | 1,802 |
| | Fourth | 1,508 |
| 1954 | First | 2,255 |
| | Second | 2,526 |
| | Third | 2,627 |
| | Fourth | 2,395 |
| 1955 | First | 3,798 |
| | Second | 2,844 |
| | Third | 4,943 |
| | Fourth | 3,716 |
| 1956 | First | 2,590 |
| | Second | 2,120 |
| | Third | 1,358 |
| | Fourth | 1,338 |
| 1957 | First | 1,610 |
| | Second | 1,440 |
| | Third | 1,576 |
| | Fourth | 2,064 |
| 1958 | First | 1,508 |

Source: (1) Derived from Schedule 31. (Govt Ex 359)

(2) Derived from Schedule 20. (Govt Ex 342)

SCHEDULE 39

2817

usted for Stock Splits as a
York Stock Exchange
Quarter 1958

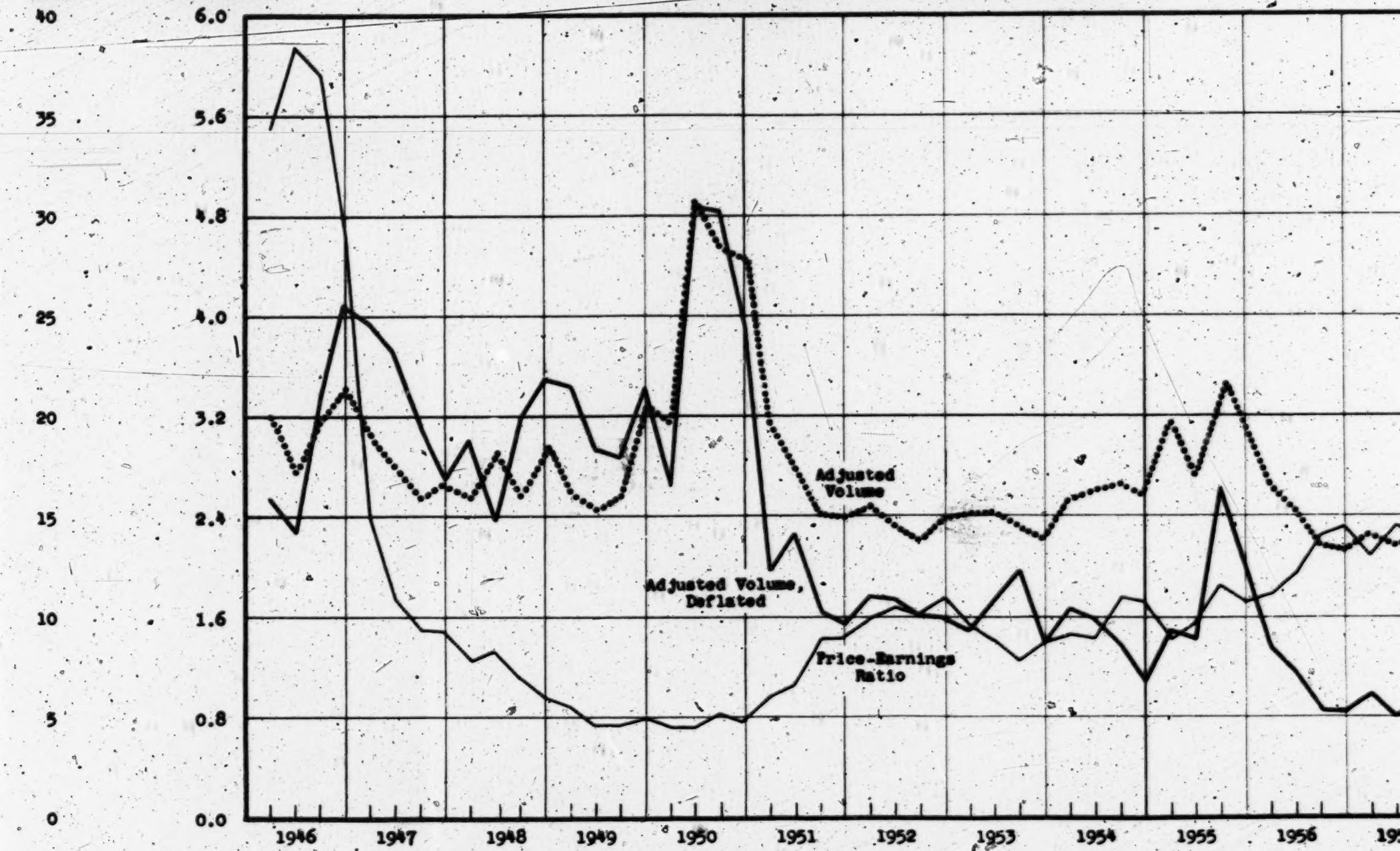
| | General Motors Adjusted Volume | Total Volume of Shares Traded | General Motors as a Per Cent of Total |
|---|---|---|---|
| | ----------thousand shares---------- | | (1) ÷ (2) |
| | (1) | (2) | (3) |
| irst | 2,142 | 119,779 | 1.79 % |
| econd | 1,800 | 103,217 | 1.74 |
| hird | 1,466 | 89,947 | 1.63 |
| ourth | 1,877 | 118,880 | 1.58 |
| irst | 1,952 | 131,746 | 1.48 % |
| econd | 2,091 | 119,883 | 1.74 |
| hird | 1,802 | 90,896 | 1.98 |
| ourth | 1,508 | 106,802 | 1.41 |
| irst | 2,255 | 136,450 | 1.65 % |
| econd | 2,526 | 159,231 | 1.59 |
| hird | 2,627 | 186,153 | 1.41 |
| ourth | 2,395 | 221,239 | 1.08 |
| irst | 3,798 | 257,072 | 1.48 % |
| econd | 2,844 | 196,954 | 1.44 |
| hird | 4,943 | 185,182 | 2.67 |
| ourth | 3,716 | 181,249 | 2.05 |
| irst | 2,590 | 190,796 | 1.36 % |
| econd | 2,120 | 184,591 | 1.15 |
| hird | 1,358 | 161,925 | 0.84 |
| ourth | 1,332 | 161,933 | 0.82 |
| irst | 1,610 | 163,865 | 0.98 % |
| econd | 1,440 | 183,523 | 0.78 |
| hird | 1,576 | 159,602 | 0.99 |
| ourth | 2,064 | 207,462 | 0.99 |
| irst | 1,508 | 177,849 | 0.85 % |

dule 31. (Govt. Ex. 359)

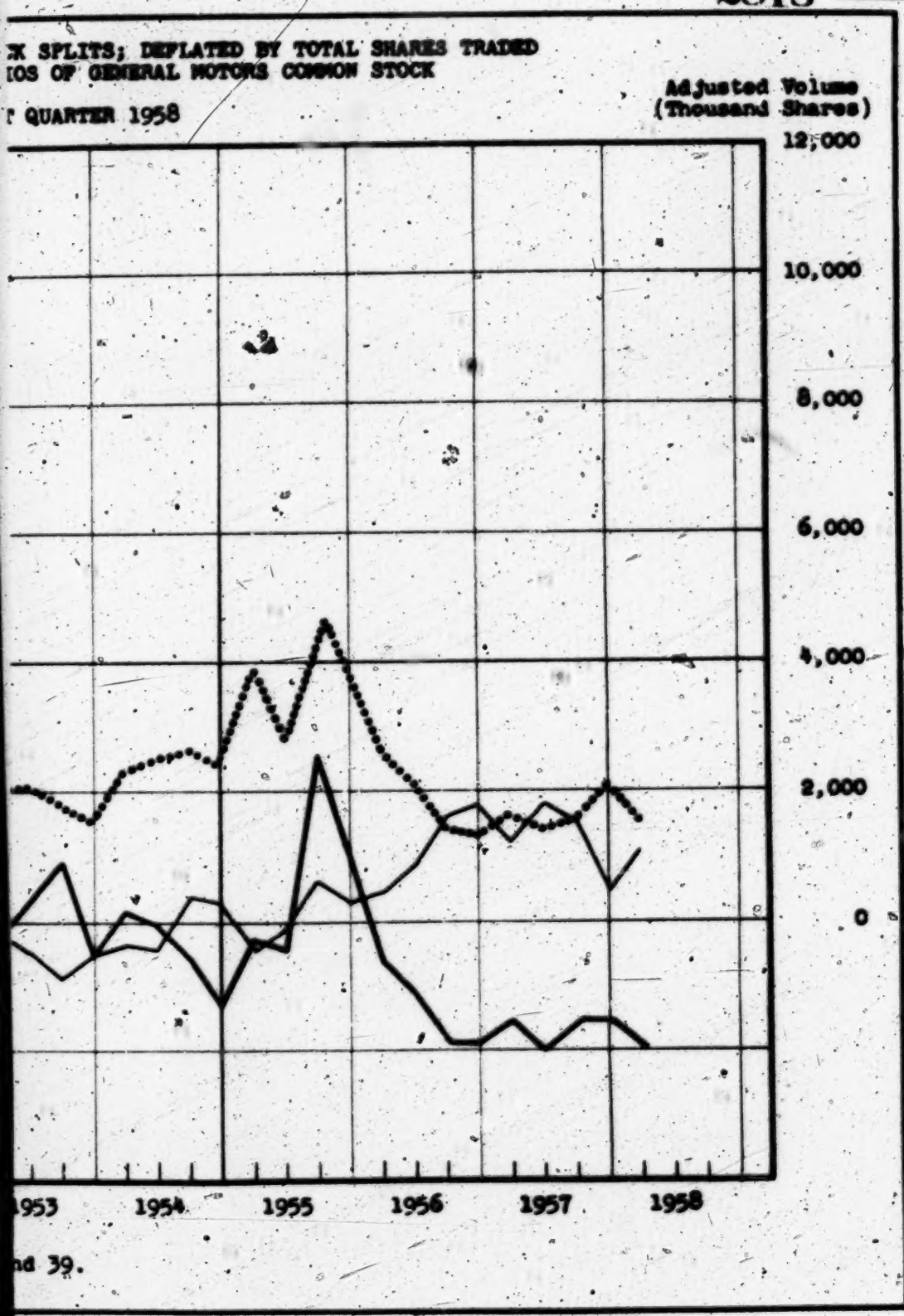
dule 20. (Govt. Ex. 342)

VOLUME OF GENERAL MOTORS COMMON STOCK TRADED ADJUSTED FOR STOCK SPLITS; DEFLATED BY TOTAL SHARES TRADED ON THE NEW YORK STOCK EXCHANGE; AND PRICE-EARNINGS RATIOS OF GENERAL MOTORS COMMON STOCK

QUARTERLY, FIRST QUARTER 1946 - FIRST QUARTER 1958




Source: Schedules 16 and 39.


K SPLITS; DEFLATED BY TOTAL SHARES TRADED
IOS OF GENERAL MOTORS COMMON STOCK
QUARTER 1958
Adjusted Volume
(Thousand Shares)
12,000
10,000
8,000
6,000
4,000
2,000
0
1953
1954
1955
1956
1957
1958

nd 39.

## Volume of du Pont Common Stock Traded on the New York Stock Exchange, Actual and Adjusted for Stock Splits Monthly, January 1946-May 1958

| | 1946 | 1947 | 1948 | 1949 | 1950 | 1951 | 1952 | 1953 | 1954 | 1955 | 1956 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Actual** | | | | | | | | | | | |
| January | 23,800 | 17,100 | 18,100 | 34,100 | 182,900 | 180,700 | 83,500 | 87,700 | 79,600 | 92,200 | 88,500 |
| February | 18,900 | 16,200 | 17,000 | 28,800 | 137,400 | 97,300 | 73,400 | 78,700 | 65,000 | 62,800 | 107,100 |
| March | 16,800 | 17,000 | 21,200 | 43,600 | 189,300 | 92,400 | 65,000 | 86,700 | 78,200 | 74,500 | 84,400 |
| April | 22,200 | 18,000 | 35,400 | 30,000 | 155,000 | 96,000 | 76,000 | 104,200 | 83,100 | 56,900 | 94,400 |
| May | 21,000 | 20,600 | 35,600 | 31,400[1] | 165,800 | 111,200 | 81,000 | 78,900 | 66,700 | 62,500 | 92,500 |
| June | 17,700 | 23,300 | 22,900 | 109,100[1] | 256,600 | 78,300 | 72,500 | 63,700 | 110,100 | 71,800 | 74,600 |
| July | 11,800 | 20,300 | 17,300 | 133,100 | 271,300 | 107,200 | 76,800 | 79,800 | 108,300 | 114,100 | 61,600 |
| August | 11,700 | 13,000 | 14,400 | 215,600 | 176,800 | 96,600 | 41,900 | 97,000 | 64,600 | 71,100 | 54,800 |
| September | 38,200 | 14,800 | 18,700 | 193,900 | 125,900 | 65,500 | 68,700 | 69,800 | 73,300 | 107,200 | 67,500 |
| October | 26,100 | 24,400 | 38,500 | 224,500 | 162,800 | 109,800 | 76,600 | 124,700 | 60,200 | 96,700 | 67,500 |
| November | 21,100 | 14,200 | 26,200 | 257,600 | 146,300 | 87,200 | 100,900 | 107,700 | 91,700 | 154,800 | 96,600 |
| December | 17,400 | 19,200 | 32,200 | 178,500 | 155,500 | 82,700 | 76,900 | 73,100 | 75,600 | 75,400 | 108,300 |
| **Adjusted[2]** | | | | | | | | | | | |
| January | 95,200 | 68,400 | 72,400 | 136,400 | 182,900 | 180,700 | 83,500 | 87,700 | 79,600 | 92,200 | 88,500 |
| February | 75,600 | 64,800 | 68,000 | 115,200 | 137,400 | 97,300 | 73,400 | 78,700 | 65,000 | 62,800 | 107,100 |
| March | 67,200 | 68,000 | 84,800 | 174,400 | 189,300 | 92,400 | 65,000 | 86,700 | 78,200 | 74,500 | 84,400 |
| April | 88,800 | 72,000 | 141,600 | 120,000 | 155,000 | 96,000 | 76,000 | 104,200 | 83,100 | 56,900 | 94,400 |
| May | 84,000 | 82,400 | 142,400 | 118,700 | 165,800 | 111,200 | 81,000 | 78,900 | 66,700 | 62,500 | 92,500 |
| June | 70,800 | 93,200 | 91,600 | 154,400 | 256,600 | 78,300 | 72,500 | 63,700 | 110,100 | 71,800 | 74,600 |
| July | 47,200 | 81,200 | 69,200 | 133,100 | 271,300 | 107,200 | 76,800 | 79,800 | 108,300 | 114,100 | 61,600 |
| August | 46,800 | 52,000 | 57,600 | 215,600 | 176,800 | 96,600 | 41,900 | 97,000 | 64,600 | 71,100 | 54,800 |
| September | 152,800 | 59,200 | 74,800 | 193,900 | 125,900 | 65,500 | 68,700 | 69,800 | 73,300 | 107,200 | 67,500 |
| October | 104,400 | 97,600 | 154,000 | 224,500 | 162,800 | 109,800 | 76,600 | 124,700 | 60,200 | 96,700 | 67,500 |
| November | 84,400 | 56,800 | 104,800 | 257,600 | 146,300 | 87,200 | 100,900 | 107,700 | 91,700 | 154,800 | 96,600 |
| December | 69,600 | 76,800 | 128,800 | 178,500 | 155,500 | 82,700 | 76,900 | 73,100 | 75,600 | 75,400 | 108,300 |

[1] 4-for-1 split of $20 par common stock effective June 15, 1949. Volume includes following stock traded:

| | $20 Par Stock | $5 Par Stock |
|---|---|---|
| May 1949 | 29,100 | 2,300 |
| June 1949 | 15,100 | 94,000 |

[2] Data adjusted for split by multiplying $20 par stock traded by 4.

Note: Data comprise reported round-lot sales.

Source: William B. Dana Company, Bank and Quotation Record, monthly issues, 1946-1958.

Exchange,

| 1954 | 1955 | 1956 | 1957 | 1958 |
|---|---|---|---|---|
| 79,600 | 92,200 | 88,500 | 67,400 | 65,900 |
| 65,000 | 62,800 | 107,100 | 64,900 | 51,300 |
| 78,200 | 74,500 | 84,400 | 52,600 | 63,200 |
| 83,100 | 56,900 | 94,400 | 76,200 | 75,300 |
| 66,700 | 62,500 | 92,500 | 73,800 | 72,500 |
| 110,100 | 71,800 | 74,600 | 66,800 | |
| 108,300 | 114,100 | 61,600 | 72,300 | |
| 64,600 | 71,100 | 54,800 | 65,300 | |
| 73,300 | 107,200 | 67,500 | 56,300 | |
| 60,200 | 96,700 | 67,500 | 99,000 | |
| 91,700 | 154,800 | 96,600 | 66,200 | |
| 75,600 | 75,400 | 108,300 | 55,600 | |

| | | | | |
|---|---|---|---|---|
| 79,600 | 92,200 | 88,500 | 67,400 | 65,900 |
| 65,000 | 62,800 | 107,100 | 64,900 | 51,300 |
| 78,200 | 74,500 | 84,400 | 52,600 | 63,200 |
| 83,100 | 56,900 | 94,400 | 76,200 | 75,300 |
| 66,700 | 62,500 | 92,500 | 73,800 | 72,500 |
| 110,100 | 71,800 | 74,600 | 66,800 | |
| 108,300 | 114,100 | 61,600 | 72,300 | |
| 64,600 | 71,100 | 54,800 | 65,300 | |
| 73,300 | 107,200 | 67,500 | 56,300 | |
| 60,200 | 96,700 | 67,500 | 99,000 | |
| 91,700 | 154,800 | 96,600 | 66,200 | |
| 75,600 | 75,400 | 108,300 | 55,600 | |

15, 1949.

tock.

00

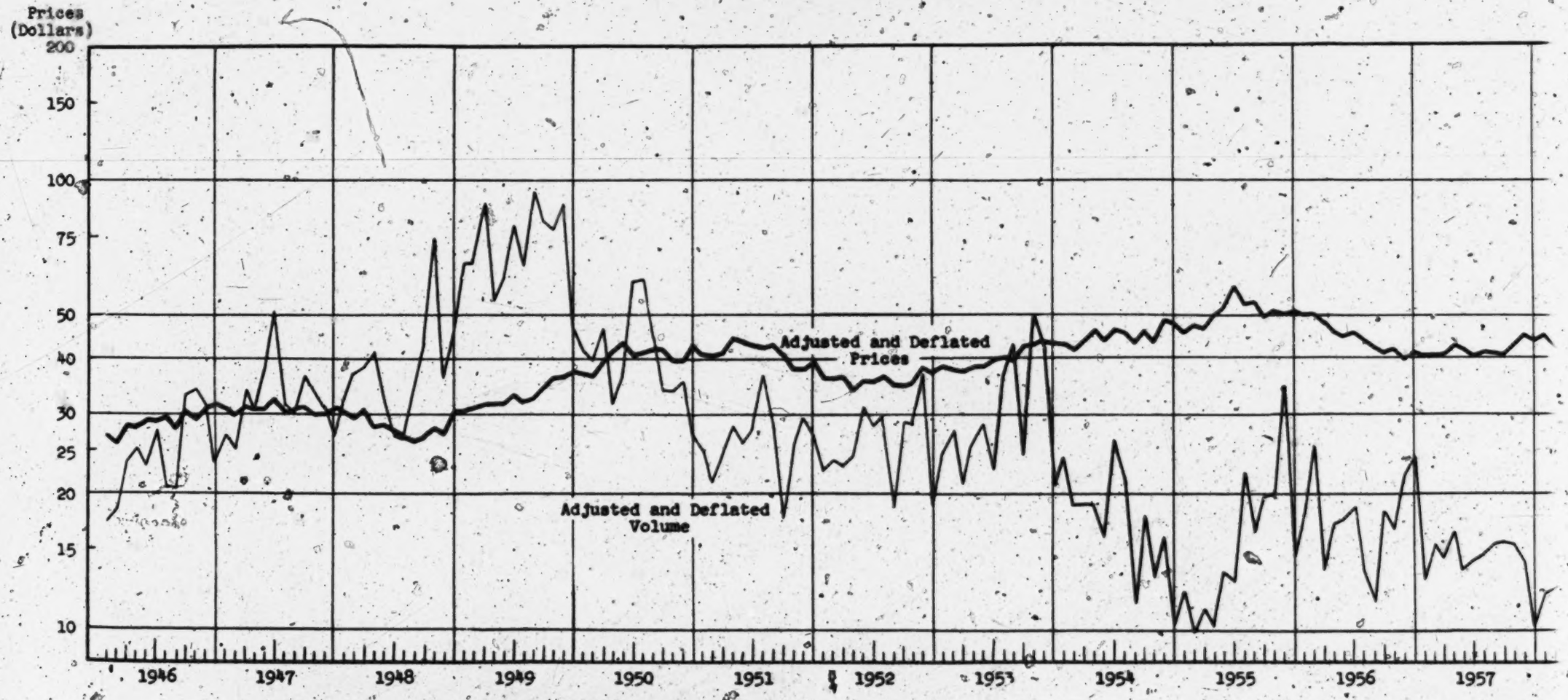
00

traded by 4.

.

issues, 1946-1958.

ADJUSTED AND DEFLATED CLOSING PRICES OF DU PONT COMMON STOCK COMPARED WITH
ADJUSTED AND DEFLATED VOLUME OF DU PONT COMMON STOCK TRADED
MONTHLY, JANUARY 1946 - MAY 1958



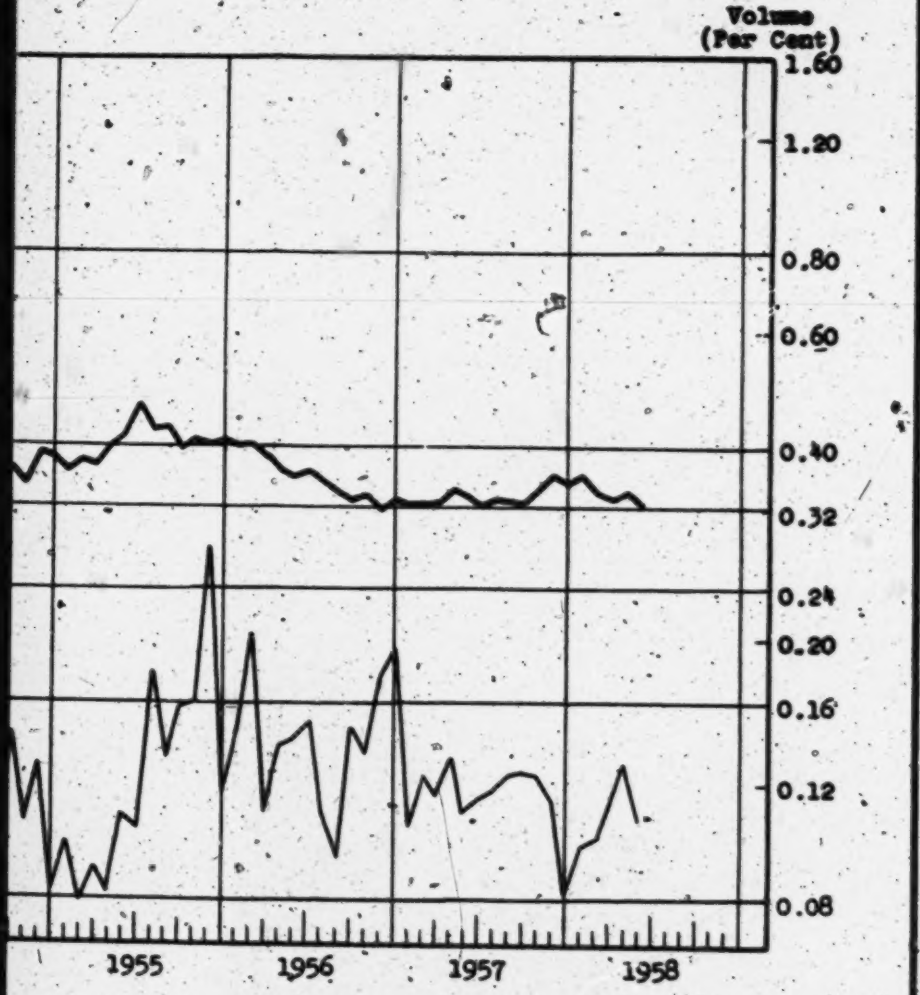

Note: Prices are adjusted for stock splits and deflated by Standard & Poor's composite stock price index (1941-1943=100).

Volume is adjusted for stock splits and deflated by total shares traded on the New York Stock Exchange.

Exhibits 321 and

Source: ~~Schedules 13 and 33.~~

ARED WITH
D




Exhibits 321 - 373

Source: ~~Schedules 13 and 33.~~

GOVERNMENT TRIAL EXHIBIT NO. 397

## Volume of du Pont Common Stock Traded, Adjusted for Stock Splits, as a Per Cent of Total Shares Traded on the New York Stock Exchange Quarterly, First Quarter 1946-First Quarter 1958

| Year and Quarter | | Du Pont Adjusted Volume | Total Volume of Shares Traded | Du Pont as a Per Cent of Total |
|---|---|---|---|---|
| | | ----------thousand shares---------- | | (1) ÷ (2) |
| | | (1) | (2) | (3) |
| 1946 | First | 238 | 156,809 | 0.152 % |
| | Second | 244 | 121,471 | 0.201 |
| | Third | 247 | 114,568 | 0.216 |
| | Fourth | 258 | 108,972 | 0.237 |
| 1947 | First | 201 | 89,517 | 0.225 % |
| | Second | 248 | 78,949 | 0.314 |
| | Third | 192 | 73,788 | 0.260 |
| | Fourth | 231 | 94,298 | 0.245 |
| 1948 | First | 225 | 78,634 | 0.286 % |
| | Second | 376 | 140,934 | 0.267 |
| | Third | 202 | 75,444 | 0.268 |
| | Fourth | 388 | 97,742 | 0.397 |
| 1949 | First | 426 | 73,097 | 0.583 % |
| | Second | 393 | 76,166 | 0.516 |
| | Third | 543 | 84,034 | 0.646 |
| | Fourth | 661 | 120,079 | 0.550 |
| 1950 | First | 510 | 148,566 | 0.343 % |
| | Second | 577 | 170,853 | 0.338 |
| | Third | 574 | 152,828 | 0.376 |
| | Fourth | 465 | 183,033 | 0.254 |
| 1951 | First | 370 | 194,719 | 0.190 % |
| | Second | 286 | 130,037 | 0.220 |
| | Third | 269 | 125,895 | 0.214 |
| | Fourth | 280 | 129,191 | 0.217 |
| 1952 | First | 222 | 119,779 | |
| | Second | 230 | 103,217 | |
| | Third | 187 | 89,947 | |
| | Fourth | 254 | 118,880 | |
| 1953 | First | 253 | 131,746 | |
| | Second | 247 | 119,883 | |
| | Third | 247 | 90,896 | |
| | Fourth | 306 | 106,802 | |
| 1954 | First | 223 | 136,450 | |
| | Second | 260 | 159,231 | |
| | Third | 246 | 186,153 | |
| | Fourth | 228 | 221,239 | |
| 1955 | First | 230 | 257,072 | |
| | Second | 191 | 196,954 | |
| | Third | 292 | 185,182 | |
| | Fourth | 327 | 181,249 | |
| 1956 | First | 280 | 190,796 | |
| | Second | 262 | 184,591 | |
| | Third | 184 | 161,925 | |
| | Fourth | 272 | 161,933 | |
| 1957 | First | 185 | 163,865 | |
| | Second | 217 | 183,523 | |
| | Third | 194 | 159,602 | |
| | Fourth | 221 | 207,462 | |
| 1958 | First | 180 | 177,849 | |

Source: (1) Derived from Schedule 32. (Govt. Ex. 397)

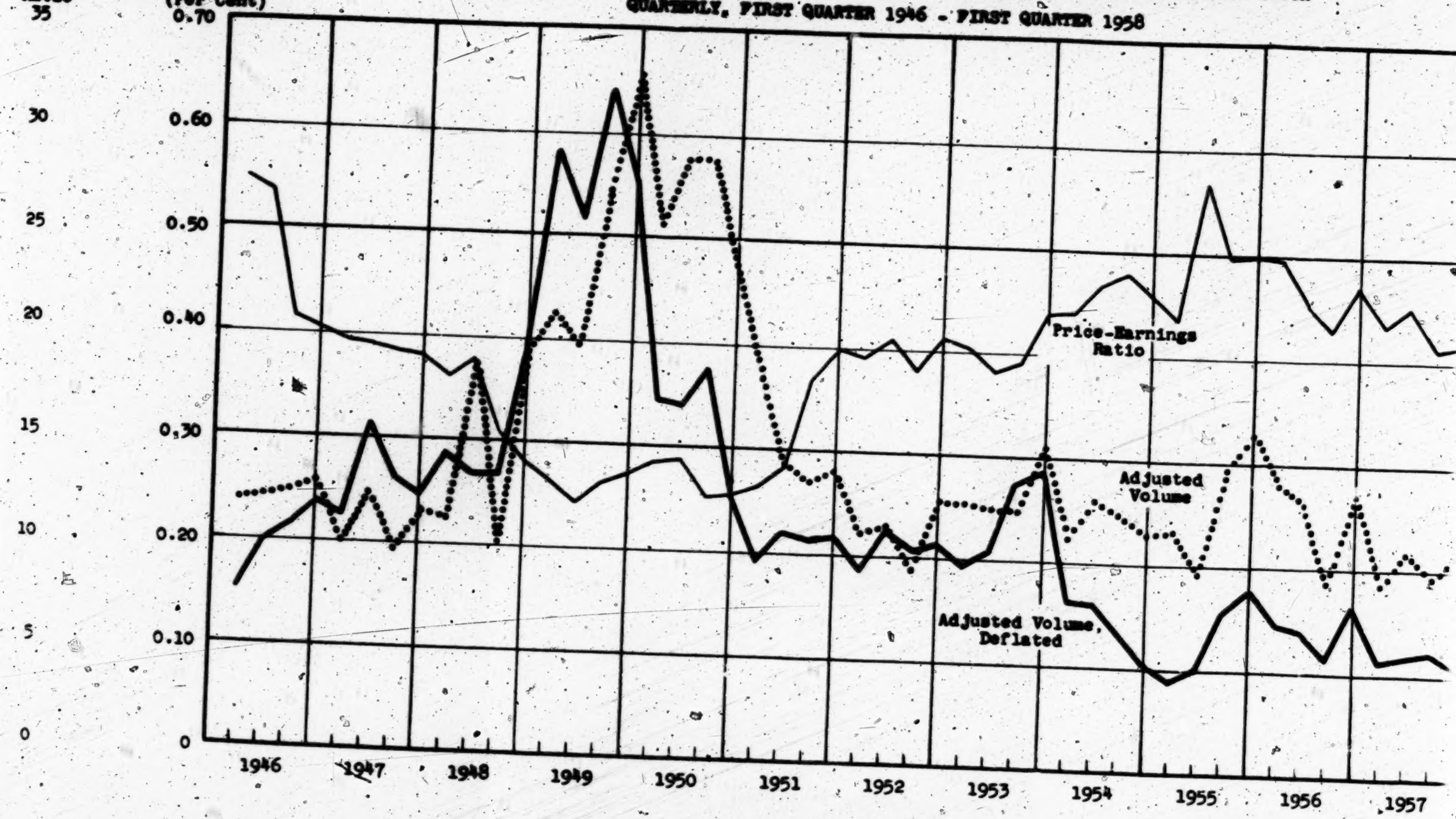
(2) Derived from Schedule 20. (Govt. Ex. 397)

lits, as a
change

| Du Pont fusted Volume | Total Volume of Shares Traded | Du Pont as a Per Cent of Total |
|---|---|---|
| ---------thousand shares---------- | | (1) ÷ (2) |
| (1) | (2) | (3) |
| 222 | 119,779 | 0.185 % |
| 230 | 103,217 | 0.223 |
| 187 | 89,947 | 0.208 |
| 254 | 118,880 | 0.214 |
| 253 | 131,746 | 0.192 % |
| 247 | 119,[illegible] | 0.206 |
| 247 | 90,[illegible] | 0.272 |
| 306 | 106,[illegible] | 0.287 |
| 223 | 136,450 | 0.163 % |
| 260 | 159,231 | 0.163 |
| 246 | 186,153 | 0.132 |
| 228 | 221,239 | 0.103 |
| 230 | 257,072 | 0.089 % |
| 191 | 196,954 | 0.097 |
| 292 | 185,182 | 0.158 |
| 327 | 181,249 | 0.180 |
| 280 | 190,796 | 0.147 % |
| 262 | 184,591 | 0.142 |
| 184 | 161,925 | 0.114 |
| 272 | 161,933 | 0.168 |
| 185 | 163,865 | 0.113 % |
| 217 | 183,523 | 0.118 |
| 194 | 159,602 | 0.122 |
| 221 | 207,462 | 0.107 |
| 180 | 177,849 | 0.101 % |

VOLUME OF DU PONT COMMON STOCK TRADED ADJUSTED FOR STOCK SPLITS; DEFLATED BY TOTAL SHARES TRADED ON THE NEW YORK STOCK EXCHANGE; AND PRICE-EARNINGS RATIOS OF DU PONT COMMON STOCK

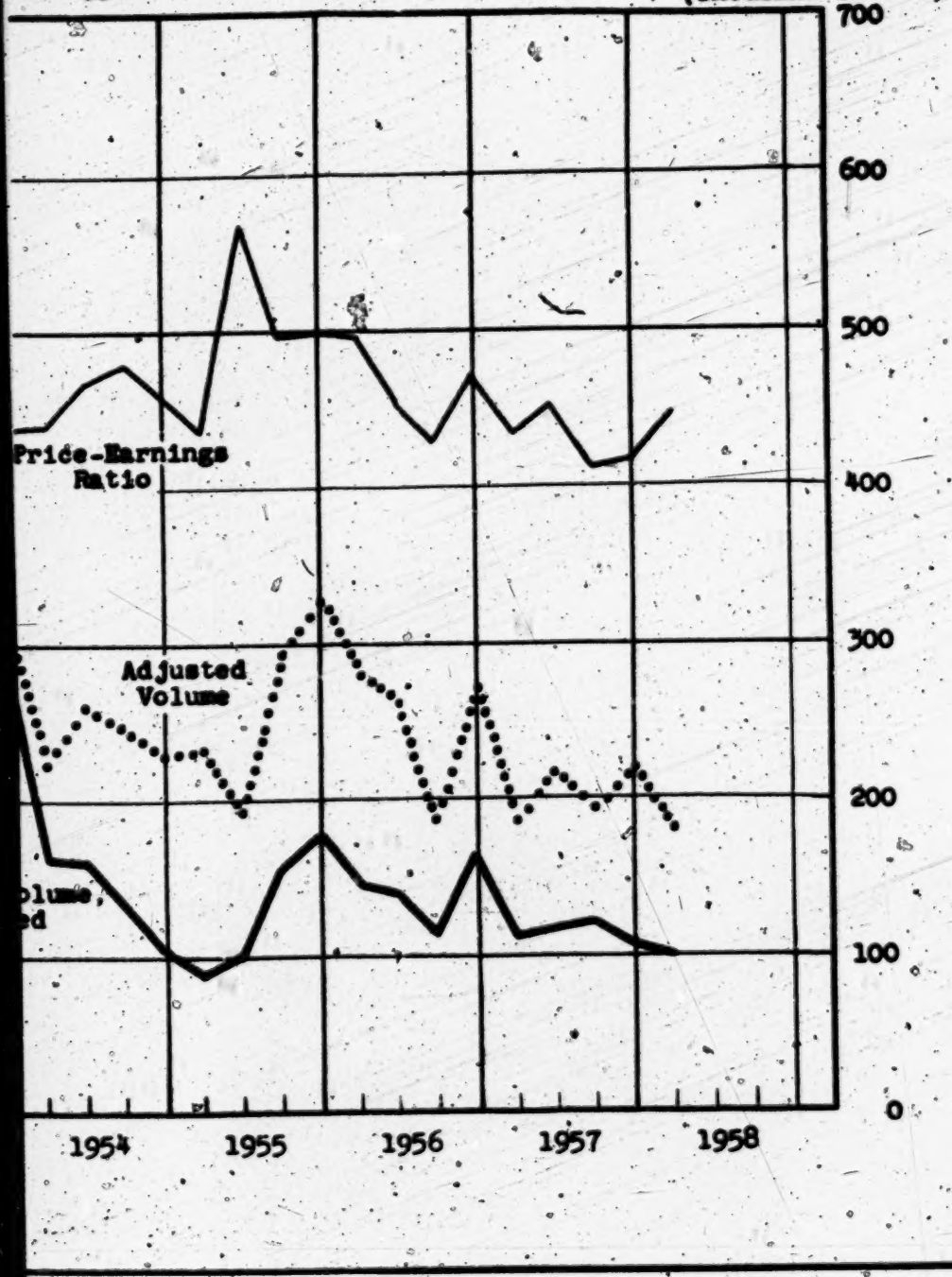
QUARTERLY, FIRST QUARTER 1946 - FIRST QUARTER 1958




Source: Schedules 19 and 46.

DEFLATED BY TOTAL SHARES TRADED
OF DU PONT COMMON STOCK

TER 1958



[fol. 3235] GOVERNMENT TRIAL EXHIBIT No. 403

Market Value of Public Offerings of New Corporate Equity Issues as Per Cent of Market Value of Total Shares Traded on NYSE Annually, 1946 through 1957

| Year | Market Value: Total Shares Traded on the NYSE | Market Value: Public Offerings Corporate Equity | Per Cent of (2) to (1) |
|---|---|---|---|
| | million dollars | | (2)+(1) |
| | (1) | (2) | (3) |
| 1946 | $15,520 | $1,963 | 12.65% |
| 1947 | 9,706 | 1,452 | 14.96 |
| 1948 | 10,923 | 1,028 | 9.41 |
| 1949 | 8,998 | 1,112 | 12.36 |
| 1950 | 18,725 | 1,321 | 7.05 |
| 1951 | 18,185 | 1,962 | 10.79 |
| 1952 | 14,720 | 1,888 | 12.83 |
| 1953 | 14,218 | 1,725 | 12.13 |
| 1954 | 24,249 | 1,844 | 7.60 |
| 1955 | 32,745 | 2,644 | 8.07 |
| 1956 | 29,787 | 2,827 | 9.49 |
| 1957 | 27,451 | 2,841 | 10.35 |

Source: (1) Derived from Schedule 20. (Govt. Ex. 342).
(2) 1946–1956: Securities and Exchange Commission, 23rd Annual Report, 1957, p. 218.
1957: Worksheets of the Securities and Exchange Commission.

---

[fol. 3236] GOVERNMENT TRIAL EXHIBIT No. 405

Market Value of GM Shares Listed as Per Cent of Market Value of All Shares Listed on NYSE Annually, 1946 through 1957

| Year | Average Market Value of Shares Listed: GM | Average Market Value of Shares Listed: Total NYSE | GM as a Per Cent of Total (1)+(2) |
|---|---|---|---|
| | million dollars | | |
| | (1) | (2) | (3) |
| 1946 | $ 2,838 | $ 73,532 | 3.86% |
| 1947 | 2,395 | 68,454 | 3.50 |
| 1948 | 2,533 | 67,680 | 3.74 |
| 1949 | 2,798 | 71,670 | 3.90 |
| 1950 | 3,523 | 85,050 | 4.14 |
| 1951 | 4,253 | 101,646 | 4.18 |
| 1952 | 5,202 | 115,010 | 4.52 |
| 1953 | 5,577 | 118,896 | 4.69 |
| 1954 | 6,816 | 143,203 | 4.76 |
| 1955 | 10,720 | 188,424 | 5.69 |
| 1956 | 12,831 | 213,438 | 6.01 |
| 1957 | 11,152 | 207,373 | 5.38 |

Source: (1) Derived from Schedule 54. (Govt. Ex. 406).
(2) Derived from Schedule 21. (Govt. Ex. 343).

[fol. 3237]

GOVERNMENT TRIAL EXHIBIT NO. 406

**Market Value of General Motors and du Pont Common Stock**
**Listed on the New York Stock Exchange**
**Monthly, January 1946-May 1958**

| | 1946 | 1947 | 1948 | 1949 | 1950 | 1951 | 1952 | 1953 | 1954 | 1955 | 19 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | General Motors (Thousand Dollars) | | | | | |
| January | $ 3,404,326 | $ 2,467,109 | $ 2,456,082 | $ 2,610,448 | $ 3,125,895 | $ 4,239,486 | $ 4,537,278 | $ 5,904,513 | $ 5,476,792 | $ 8,823,765 | $ 12,4 |
| February | 3,310,560 | 2,756,521 | 2,373,343 | 2,624,208 | 3,343,638 | 4,476,591 | 4,537,278 | 5,915,450 | 5,521,049 | 8,835,903 | 12,4 |
| March | 3,183,804 | 2,651,773 | 2,326,504 | 2,596,643 | 3,349,195 | 4,531,721 | 4,653,008 | 5,772,200 | 5,698,077 | 8,726,324 | 13,0 |
| April | 3,269,234 | 2,516,682 | 2,497,408 | 2,577,369 | 3,577,965 | 4,630,956 | 4,752,243 | 5,413,808 | 5,996,811 | 8,993,302 | 12,5 |
| May | 3,216,882 | 2,480,869 | 2,626,943 | 2,524,973 | 3,757,161 | 4,487,617 | 4,796,347 | 5,502,016 | 6,245,712 | 8,912,113 | 11,8 |
| June | 3,178,247 | 2,522,239 | 2,795,113 | 2,384,369 | 4,060,334 | 4,211,964 | 4,983,790 | 5,287,052 | 6,245,712 | 9,585,598 | 12,1 |
| July | 3,040,465 | 2,646,260 | 2,717,930 | 2,604,891 | 3,649,634 | 4,217,433 | 5,176,791 | 5,226,364 | 6,810,076 | 11,391,188 | 12,9 |
| August | 2,841,995 | 2,618,695 | 2,773,060 | 2,720,709 | 3,977,682 | 4,294,704 | 5,325,599 | 5,138,156 | 7,053,489 | 12,204,015 | 13,2 |
| September | 2,447,791 | 2,566,343 | 2,723,443 | 2,742,761 | 4,151,321 | 4,504,112 | 5,303,547 | 4,868,260 | 7,639,805 | 12,709,082 | 13,1 |
| October | 2,241,030 | 2,646,260 | 2,781,308 | 2,869,517 | 4,586,851 | 4,476,591 | 5,248,416 | 5,166,994 | 7,910,922 | 12,666,362 | 13,1 |
| November | 2,260,347 | 2,588,396 | 2,690,365 | 3,026,660 | 4,338,809 | 4,427,017 | 5,524,069 | 5,272,060 | 8,176,464 | 13,729,001 | 12,6 |
| December | 2,271,374 | 2,519,460 | 2,547,026 | 3,048,713 | 3,996,912 | 4,509,669 | 5,893,398 | 5,261,084 | 8,370,044 | 13,070,355 | 12,5 |
| | | | | | | Du Pont (Thousand Dollars) | | | | | |
| January | $ 2,096,586 | $ 2,063,218 | $ 2,010,387 | $ 2,046,153 | $ 2,757,268 | $ 3,838,920 | $ 4,023,387 | $ 4,365,553 | $ 4,872,154 | $ 7,587,423 | $ 10,1 |
| February | 2,145,947 | 2,121,611 | 1,920,017 | 2,055,225 | 2,838,507 | 3,965,548 | 3,904,848 | 4,439,162 | 4,954,517 | 7,701,424 | 10,1 |
| March | 2,125,082 | 2,068,780 | 1,891,332 | 2,066,157 | 2,832,665 | 4,045,975 | 3,932,372 | 4,414,748 | 5,130,489 | 7,627,327 | 10,4 |
| April | 2,266,203 | 2,013,857 | 1,948,518 | 2,149,204 | 3,194,432 | 4,173,052 | 3,796,480 | 4,292,612 | 5,552,329 | 8,151,777 | 10,3 |
| May | 2,353,092 | 1,978,410 | 1,995,941 | 2,123,986 | 3,478,670 | 4,381,987 | 3,748,374 | 4,372,157 | 5,746,147 | 8,784,527 | 9,7 |
| June | 2,424,699 | 2,047,925 | 2,062,891 | 2,025,935 | 3,568,732 | 4,257,756 | 3,904,107 | 4,238,612 | 5,988,398 | 9,719,426 | 9,4 |
| July | 2,352,403 | 2,146,637 | 2,030,119 | 2,087,543 | 3,202,853 | 4,243,661 | 4,025,821 | 4,369,293 | 6,327,603 | 10,813,930 | 9,8 |
| August | 2,285,668 | 2,120,221 | 1,919,228 | 2,244,461 | 3,498,393 | 4,373,494 | 4,039,999 | 4,539,747 | 6,253,496 | 10,055,758 | 9,5 |
| September | 2,018,728 | 2,110,489 | 1,894,121 | 2,342,557 | 3,594,040 | 4,446,949 | 3,901,253 | 4,394,884 | 6,447,314 | 10,166,941 | 9,2 |
| October | 1,936,700 | 2,095,195 | 1,962,466 | 2,479,838 | 3,636,279 | 4,116,583 | 3,853,102 | 4,636,337 | 6,572,726 | 9,468,602 | 8,8 |
| November | 1,921,407 | 2,079,902 | 1,934,570 | 2,709,655 | 3,619,393 | 3,870,966 | 4,107,946 | 4,693,155 | 6,937,561 | 10,551,705 | 8,5 |
| December | 2,024,290 | 2,045,144 | 1,965,256 | 2,704,006 | 3,630,650 | 4,031,880 | 4,311,785 | 4,826,700 | 7,501,915 | 10,369,288 | 8,6 |

Source: Market values of common stock listed derived by multiplying average of high and low actual pric

SCHEDULE 54

n Stock

| | 1954 | 1955 | 1956 | 1957 | 1958 |
|---|---|---|---|---|---|
| rs)---------- | | | | | |
| 513 | $ 5,476,792 | $ 8,823,765 | $ 12,446,540 | $ 11,756,708 | $ 9,910,379 |
| 450 | 5,521,049 | 8,835,903 | 12,432,644 | 11,078,051 | 9,826,493 |
| 200 | 5,698,077 | 8,726,324 | 13,081,821 | 11,064,443 | 9,865,225 |
| 808 | 5,996,811 | 8,993,302 | 12,597,097 | 11,401,082 | 10,239,849 |
| 016 | 6,245,712 | 8,912,113 | 11,885,116 | 12,070,935 | 10,754,038 |
| 052 | 6,245,712 | 9,585,598 | 12,168,109 | 11,899,613 | |
| 364 | 6,810,076 | 11,391,188 | 12,940,379 | 12,617,997 | |
| 156 | 7,053,489 | 12,204,015 | 13,206,160 | 12,205,659 | |
| 260 | 7,639,805 | 12,709,062 | 13,104,968 | 11,630,506 | |
| 994 | 7,910,922 | 12,666,362 | 13,108,943 | 10,897,866 | |
| 060 | 8,176,464 | 13,729,001 | 12,623,187 | 10,375,263 | |
| 084 | 8,370,044 | 13,070,355 | 12,591,951 | 9,711,545 | |
| ---------- | | | | | |
| 553 | $ 4,872,154 | $ 7,587,423 | $ 10,195,399 | $ 8,510,911 | $ 8,251,559 |
| 162 | 4,954,517 | 7,701,434 | 10,164,068 | 8,248,686 | 8,288,590 |
| 748 | 5,130,489 | 7,627,327 | 10,451,969 | 8,154,604 | 8,151,640 |
| 612 | 5,552,329 | 8,151,777 | 10,312,283 | 8,539,414 | 8,028,714 |
| 157 | 5,746,147 | 8,784,527 | 9,715,101 | 9,015,432 | 8,088,759 |
| 612 | 5,988,398 | 9,719,426 | 9,437,272 | 8,961,254 | |
| 293 | 6,327,603 | 10,813,930 | 9,827,756 | 9,103,767 | |
| 747 | 6,253,496 | 10,055,758 | 9,548,410 | 8,830,141 | |
| 884 | 6,447,314 | 10,166,941 | 9,217,778 | 8,339,895 | |
| 337 | 6,572,726 | 9,468,602 | 8,841,542 | 7,838,247 | |
| 155 | 6,937,561 | 10,551,705 | 8,508,038 | 7,986,461 | |
| 700 | 7,501,915 | 10,369,288 | 8,607,820 | 8,174,579 | |

g average of high and low actual prices
sted (Schedules 34 and 51).

[fol. 3238] GOVERNMENT TRIAL EXHIBIT NO. 406-A

Number of Shares of du Pont Common Stock Listed on the New York Stock Exchange as of the End of the Month January 1946–May 1958

| | Actual | Adjusted[2] |
|---|---|---|
| January 1946–February 1948 | 11,122,471 | 44,489,884 |
| March 1948–February 1949 | 11,158,300 | 44,633,200 |
| March 1949–May 1949 | 11,208,367 | 44,833,468 |
| June 1949 | 44,833,468[1] | 44,833,468 |
| July 1949–February 1950 | 44,833,628 | 44,833,628 |
| March 1950–February 1951 | 45,031,324 | 45,031,324 |
| March 1951–February 1952 | 45,175,126 | 45,175,126 |
| March 1952–February 1953 | 45,297,567 | 45,297,567 |
| March 1953–February 1954 | 45,454,287 | 45,454,287 |
| March 1954–February 1958 | 45,604,345 | 45,604,345 |
| March 1958–May 1958 | 45,731,500 | 45,731,500 |

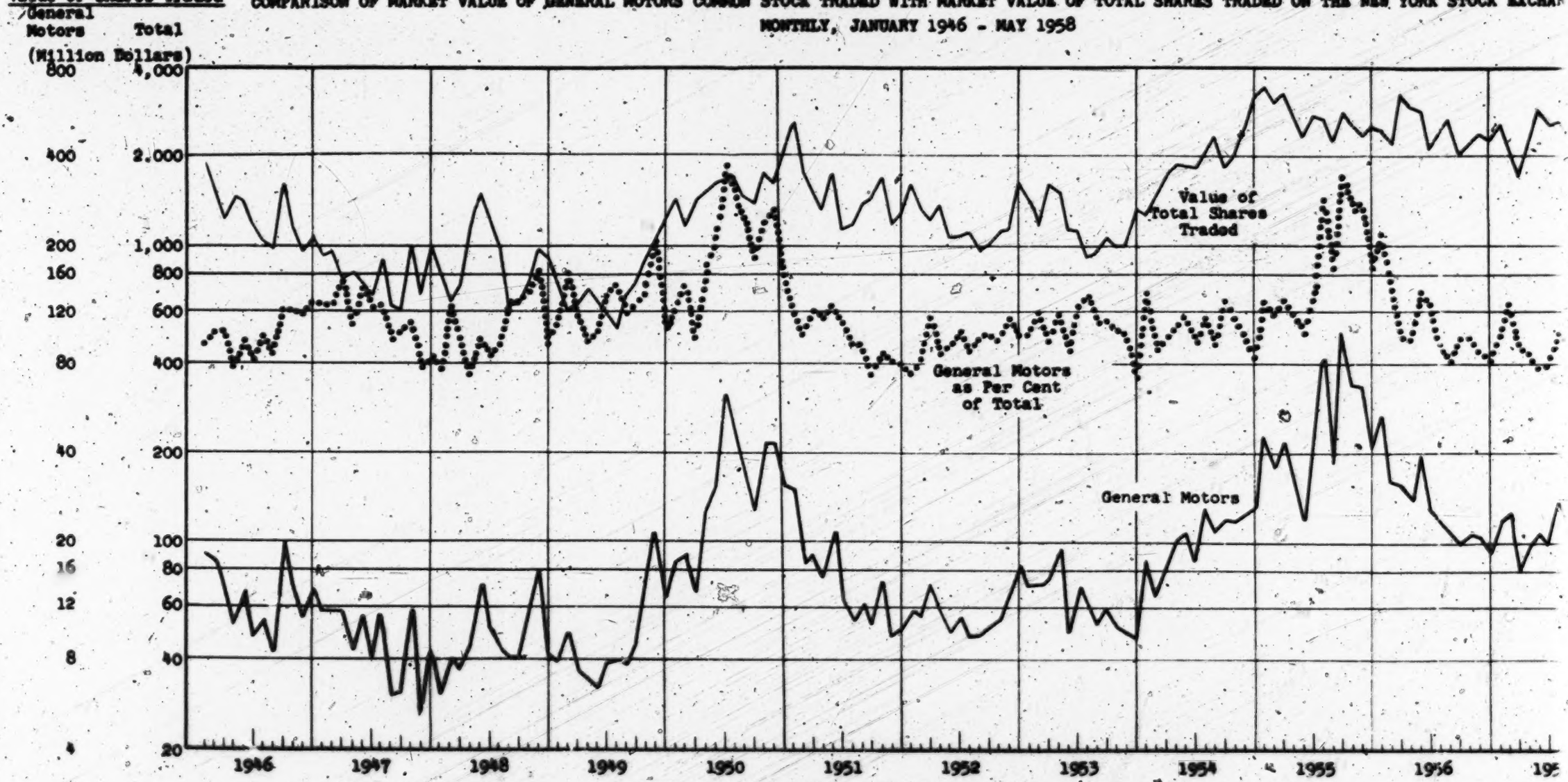
[1] 4-for-1 split of $20 par common stock.
[2] Data adjusted for split by multiplying $20 par stock by 4.
Source: Unpublished tables supplied by the New York Stock Exchange.

[fol. 3239]

GOVERNMENT TRIAL EXHIBIT No. 407

Value of Shares Traded

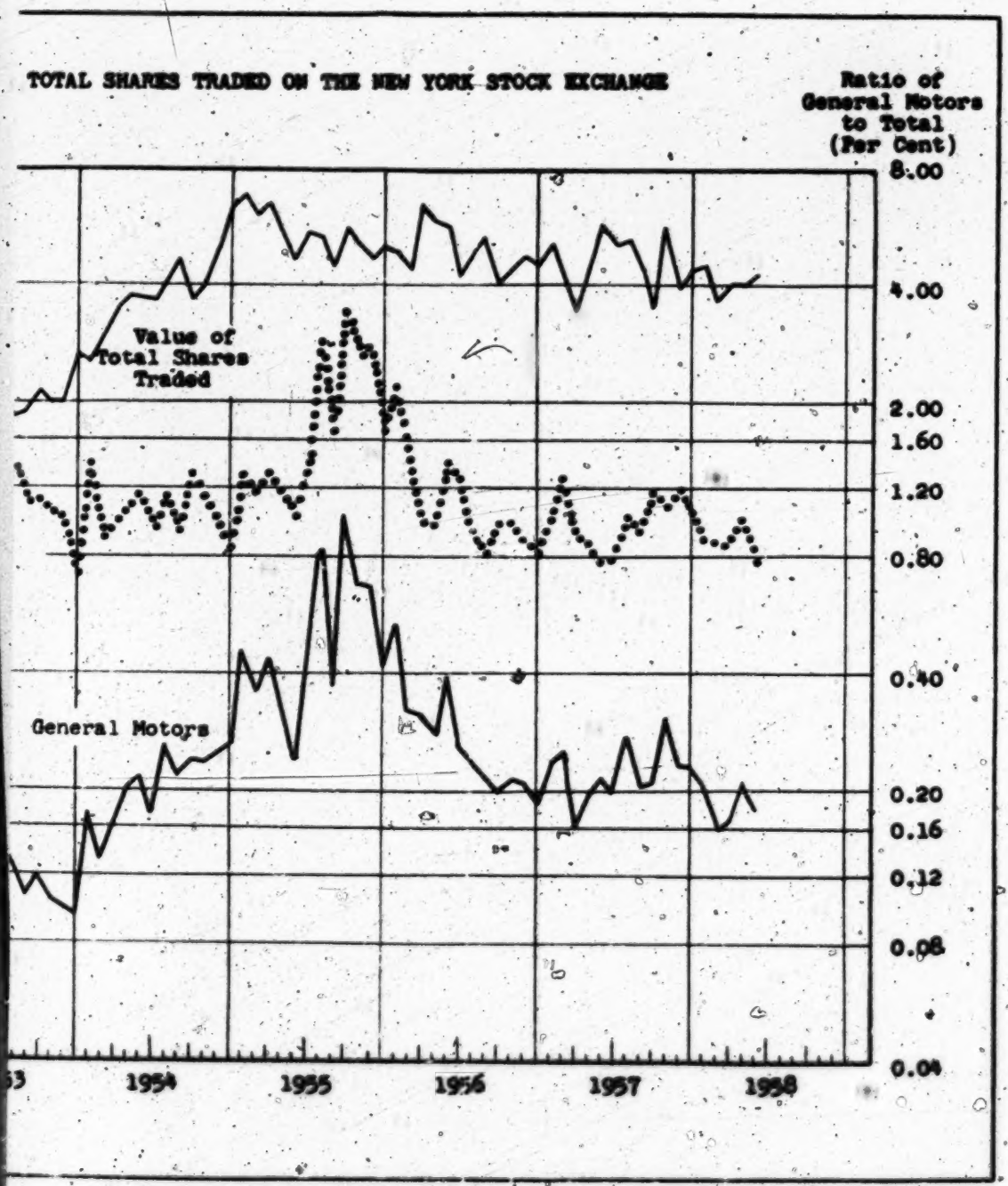
COMPARISON OF MARKET VALUE OF GENERAL MOTORS COMMON STOCK TRADED WITH MARKET VALUE OF TOTAL SHARES TRADED ON THE NEW YORK STOCK EXCHA
MONTHLY, JANUARY 1946 - MAY 1958




Source: Schedules 20, 55 and 56.

EXHIBIT 37

2827



[fol. 3240]

GOVERNMENT TRIAL EXHIBIT No. 408

**Market Value of General Motors and du Pont Common Stock Traded on the New York Stock Exchange Monthly, January 1946-May 1958**

| | 1946 | 1947 | 1948 | 1949 | 1950 | 1951 | 1952 | 1953 | 1954 | 1955 |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Motors (Thousand Dollars) | | | | | | | | | |
| January | $ 18,263 | $ 11,624 | $ 6,014 | $ 7,925 | $ 17,223 | $ 29,279 | $ 11,728 | $ 14,070 | $ 17,554 | $ 44,411 |
| February | 17,640 | 11,725 | 8,142 | 9,895 | 17,710 | 17,301 | 11,121 | 14,143 | 12,955 | 35,083 |
| March | 14,091 | 11,658 | 7,264 | 7,265 | 13,297 | 17,416 | 14,237 | 15,025 | 16,763 | 43,305 |
| April | 10,592 | 8,337 | 8,760 | 6,755 | 26,033 | 15,015 | 11,788 | 18,775 | 20,108 | 31,251 |
| May | 13,690 | 11,211 | 14,396 | 6,423 | 33,070 | 22,568 | 9,907 | 9,787 | 21,380 | 23,447 |
| June | 9,505 | 8,121 | 10,184 | 7,839 | 62,749 | 12,487 | 11,244 | 14,043 | 17,083 | 39,294 |
| July | 10,678 | 11,178 | 8,745 | 7,962 | 48,756 | 10,456 | 9,461 | 12,046 | 25,297 | 77,033 |
| August | 8,293 | 5,848 | 8,042 | 7,692 | 34,659 | 12,503 | 9,582 | 10,444 | 21,532 | 36,562 |
| September | 19,830 | 6,104 | 8,145 | 9,148 | 24,752 | 10,442 | 10,143 | 11,990 | 23,883 | 101,766 |
| October | 13,257 | 11,616 | 10,430 | 12,498 | 43,433 | 14,641 | 10,603 | 10,286 | 23,086 | 67,472 |
| November | 10,998 | 5,229 | 16,104 | 21,363 | 42,730 | 9,561 | 12,776 | 9,959 | 24,756 | 66,081 |
| December | 13,843 | 8,295 | 8,177 | 13,072 | 31,002 | 10,067 | 16,269 | 9,468 | 25,730 | 41,016 |
| | Du Pont (Thousand Dollars) | | | | | | | | | |
| January | $ 4,486 | $ 3,172 | $ 3,272 | $ 6,253 | $ 11,248 | $ 15,405 | $ 7,437 | $ 8,452 | $ 8,532 | $ 15,340 |
| February | 3,647 | 3,090 | 2,935 | 5,305 | 8,699 | 8,568 | 6,345 | 7,713 | 7,085 | 10,605 |
| March | 3,210 | 3,162 | 3,593 | 8,115 | 12,328 | 8,276 | 5,643 | 8,421 | 8,798 | 12,460 |
| April | 4,523 | 3,259 | 6,182 | 5,752 | 10,995 | 8,868 | 6,370 | 9,840 | 10,117 | 10,171 |
| May | 4,443 | 3,664 | 6,368 | 5,623 | 12,808 | 10,786 | 6,703 | 7,589 | 8,404 | 12,039 |
| June | 3,859 | 4,290 | 4,234 | 6,952 | 20,336 | 7,380 | 6,249 | 5,940 | 14,457 | 15,302 |
| July | 2,496 | 3,918 | 3,148 | 6,197 | 19,296 | 10,070 | 6,826 | 7,671 | 15,027 | 27,056 |
| August | 2,404 | 2,478 | 2,477 | 10,793 | 13,735 | 9,352 | 3,737 | 9,688 | 8,858 | 15,678 |
| September | 6,933 | 2,808 | 3,174 | 10,131 | 10,048 | 6,448 | 5,917 | 6,749 | 10,363 | 23,899 |
| October | 4,545 | 4,596 | 6,771 | 12,418 | 13,146 | 10,006 | 6,516 | 12,719 | 8,676 | 20,077 |
| November | 3,645 | 2,655 | 4,542 | 15,569 | 11,759 | 7,472 | 9,150 | 11,120 | 13,950 | 35,817 |
| December | 3,167 | 3,530 | 5,671 | 10,766 | 12,537 | 7,381 | 7,320 | 7,762 | 12,436 | 17,144 |

Source: Market values of common stock traded derived by multiplying average of high and low actual prices (Schedules 52 and 53) by corresponding actual volumes of shares traded (Schedules 31 and 32).

mon Stock

| 1953 | 1955 | 1956 | 1957 | 1958 |
|---|---|---|---|---|
| llars) | | | | |
| 14,070 | $ 17,554 | $ 44,411 | $ 58,233 | $ 23,852 | $ 20,251 |
| 14,143 | 12,935 | 39,083 | 51,848 | 25,446 | 15,865 |
| 15,025 | 16,765 | 45,305 | 30,914 | 15,745 | 16,819 |
| 18,775 | 20,108 | 31,251 | 27,571 | 19,323 | 20,021 |
| 9,787 | 21,380 | 23,447 | 39,149 | 21,389 | 17,941 |
| 14,043 | 17,083 | 39,294 | 25,667 | 19,882 | |
| 12,046 | 25,297 | 77,033 | 22,707 | 27,562 | |
| 10,444 | 21,532 | 36,562 | 21,031 | 20,093 | |
| 11,990 | 23,883 | 101,766 | 19,828 | 20,798 | |
| 10,286 | 23,086 | 67,472 | 21,581 | 30,192 | |
| 9,959 | 24,756 | 66,081 | 20,807 | 23,049 | |
| 9,468 | 25,739 | 41,016 | 18,468 | 22,894 | |
| s) | | | | |
| 8,452 | $ 8,532 | $ 15,340 | $ 19,785 | $ 12,579 | $ 11,924 |
| 7,713 | 7,085 | 10,605 | 23,870 | 11,739 | 9,324 |
| 8,421 | 8,798 | 12,460 | 19,343 | 9,406 | 11,265 |
| 9,840 | 10,117 | 10,171 | 21,346 | 14,268 | 13,220 |
| 7,589 | 8,404 | 12,039 | 19,766 | 14,589 | 12,823 |
| 5,940 | 14,457 | 15,302 | 15,438 | 13,126 | |
| 7,671 | 15,027 | 27,056 | 13,275 | 14,433 | |
| 9,688 | 8,858 | 15,678 | 11,474 | 12,644 | |
| 6,749 | 10,363 | 23,899 | 13,643 | 10,296 | |
| 12,719 | 8,676 | 20,077 | 13,087 | 17,016 | |
| 11,120 | 13,950 | 35,817 | 18,022 | 11,593 | |
| 7,762 | 12,436 | 17,144 | 20,442 | 9,966 | |

ultiplying average of
by corresponding actual

GOVERNMENT TRIAL EXHIBIT No. 408-A

**High, Low and Average of High and Low Prices of General Motors Common Stock Traded on the New York Stock Exchange Monthly, January 1946-May 1958**

| | 1946 | 1947 | 1948 | 1949 | 1950 | 1951 | 1952 | 1953 | 1954 | 1955 | 1956 | 195 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **High** | | | | | | | | | | | | |
| January | $ 80.375 | $ 60.000 | $ 58.250 | $ 60.750 | $ 73.500 | $ 50.125 | $ 51.875 | $ 68.875 | $ 65.000 | $ 107.375 | $ 46.250 | $ 43.8 |
| February | 80.000 | 65.875 | 56.500 | 62.625 | 76.375 | 52.250 | 52.875 | 69.750 | 64.000 | 102.875 | 46.375 | 40.6 |
| March | 73.875 | 63.125 | 55.000 | 60.375 | 77.875 | 52.750 | 55.125 | 68.375 | 65.750 | 98.375 | 49.250 | 40.2 |
| April | 76.750 | 59.875 | 58.750 | 59.750 | 85.750 | 53.875 | 55.000 | 63.000 | 70.000 | 100.250 | 46.750 | 42.7 |
| May | 75.875 | 60.375 | 64.125 | 59.500 | 90.500 | 54.000 | 55.875 | 64.250 | 72.750 | 98.750 | 44.875 | 44.0 |
| June | 74.625 | 59.875 | 65.000 | 56.250 | 99.125 | 49.375 | 58.625 | 61.875 | 73.250 | 110.125 | 45.625 | 43.6 |
| July | 73.250 | 61.875 | 64.750 | 62.125 | 89.000 | 49.375 | 59.875 | 60.750 | 82.000 | 137.000 | 47.875 | 47.5 |
| August | 68.750 | 61.250 | 65.000 | 63.750 | 94.875 | 50.250 | 61.625 | 60.875 | 82.750 | 138.000 | 48.750 | 45.1 |
| September | 61.000 | 59.750 | 64.750 | 64.125 | 49.250[a] | 52.250 | 61.500 | 56.375 | 94.875 | 48.750[b] | 48.000 | 43.3 |
| October | 53.875 | 61.875 | 65.750 | 68.000 | 54.750[a] | 52.750 | 61.000 | 61.000 | 92.125 | 47.250[b] | 48.375 | 41.0 |
| November | 54.375 | 60.125 | 66.000 | 72.750 | 53.000 | 51.375 | 64.500 | 61.375 | 95.250 | 54.000[b] | 48.000 | 38.7 |
| December | 54.750 | 58.375 | 59.250 | 72.000 | 47.250 | 52.000 | 69.500 | 60.875 | 98.750 | 48.625 | 46.500 | 36.0 |
| **Low** | | | | | | | | | | | | |
| January | $ 74.000 | $ 51.875 | $ 53.125 | $ 57.625 | $ 68.250 | $ 46.000 | $ 51.000 | $ 65.000 | $ 58.750 | $ 92.000 | $ 43.000 | $ 40.1 |
| February | 70.125 | 59.125 | 51.125 | 56.375 | 73.250 | 49.250 | 50.000 | 64.375 | 60.750 | 92.250 | 42.750 | 38.5 |
| March | 70.500 | 57.125 | 50.500 | 57.375 | 74.000 | 50.000 | 50.375 | 62.500 | 63.000 | 89.500 | 44.500 | 38.7 |
| April | 71.500 | 54.250 | 54.500 | 57.125 | 76.500 | 51.125 | 52.750 | 59.750 | 65.500 | 93.375 | 43.500 | 38.6 |
| May | 70.000 | 52.125 | 55.000 | 55.000 | 79.875 | 47.750 | 52.875 | 60.500 | 68.375 | 93.125 | 40.250 | 42.1 |
| June | 69.500 | 54.500 | 61.750 | 51.875 | 85.000 | 46.125 | 54.375 | 58.000 | 67.875 | 96.250 | 41.500 | 41.2 |
| July | 64.625 | 58.125 | 58.500 | 56.000 | 76.500 | 46.250 | 57.500 | 57.750 | 71.875 | 108.250 | 44.750 | 42.5 |
| August | 60.125 | 57.500 | 60.750 | 59.625 | 85.500 | 47.125 | 59.125 | 55.625 | 76.625 | 124.750 | 45.750 | 41.8 |
| September | 50.000 | 56.625 | 58.750 | 60.250 | 48.875[a] | 49.875 | 58.750 | 53.625 | 77.750 | 44.250[b] | 45.750 | 39.5 |
| October | 47.750 | 58.125 | 60.375 | 62.125 | 49.250[a] | 48.750 | 58.000 | 55.750 | 86.625 | 43.625[b] | 45.375 | 36.6 |
| November | 48.125 | 57.250 | 56.000 | 64.500 | 45.375 | 49.000 | 60.750 | 57.750 | 89.500 | 44.500[b] | 42.250 | 35.1 |
| December | 48.250 | 55.875 | 56.250 | 66.250 | 43.375 | 50.250 | 64.125 | 58.000 | 90.375 | 45.125 | 43.500 | 33.1 |
| **Average of High and Low** | | | | | | | | | | | | |
| January | $ 77.188 | $ 55.938 | $ 55.688 | $ 59.188 | $ 70.875 | $ 48.062 | $ 51.438 | $ 66.938 | $ 61.875 | $ 99.688 | $ 44.625 | $ 42.0 |
| February | 75.062 | 62.500 | 53.812 | 59.500 | 75.812 | 50.750 | 51.438 | 67.062 | 62.375 | 97.562 | 44.562 | 39.5 |
| March | 72.188 | 60.125 | 52.750 | 58.875 | 75.938 | 51.375 | 52.750 | 65.438 | 64.375 | 93.938 | 46.875 | 39.6 |
| April | 74.125 | 57.062 | 56.625 | 58.438 | 81.125 | 52.500 | 53.875 | 61.375 | 67.750 | 96.812 | 45.125 | 40.6 |
| May | 72.938 | 56.250 | 59.562 | 57.250 | 85.188 | 50.875 | 54.375 | 62.375 | 70.562 | 95.938 | 42.562 | 43.0 |
| June | 72.062 | 57.188 | 63.375 | 54.062 | 92.062 | 47.750 | 56.500 | 59.938 | 70.562 | 103.188 | 43.562 | 42.4 |
| July | 68.938 | 60.000 | 61.625 | 59.062 | 82.750 | 47.812 | 58.688 | 59.250 | 76.938 | 122.625 | 46.312 | 45.0 |
| August | 64.438 | 59.375 | 62.875 | 61.688 | 90.188 | 48.688 | 60.375 | 58.250 | 79.688 | 131.375 | 47.250 | 43.5 |
| September | 55.500 | 58.188 | 61.750 | 62.188 | 49.062[a] | 51.062 | 60.125 | 55.000 | 86.312 | 46.500[b] | 46.875 | 41.4 |
| October | 50.812 | 60.000 | 63.062 | 65.062 | 52.000[a] | 50.750 | 59.500 | 58.375 | 89.375 | 45.438[b] | 46.875 | 38.8 |
| November | 51.250 | 58.688 | 61.000 | 68.625 | 49.188 | 50.188 | 62.625 | 59.562 | 92.375 | 49.250[b] | 45.125 | 36.5 |
| December | 51.500 | 57.125 | 57.750 | 69.125 | 45.312 | 51.125 | 66.812 | 59.438 | 94.562 | 46.875 | 45.000 | 34.5 |

[a] 2-for-1 split of $10 par common stock effective October 2, 1950. High, low, and average of high and low prices for $10 par stock for September and October 1950 were as follows:

| | High | Low | Average of High and Low |
|---|---|---|---|
| September 1950 | $ 98.375 | $ 89.875 | $ 94.125 |
| October 1950 | 99.875 | 98.125 | 99.000 |

[b] 3-for-1 split of $5 par common stock effective September 30, 19 low, and average of high and low prices for $5 par stock for Se October and November 1955 were as follows:

| | High | Low | Avera High a |
|---|---|---|---|
| September 1955 | $ 145.500 | $ 128.125 | $ 13 |
| October 1955 | 141.000 | 130.625 | 13 |
| November 1955 | 140.000 | 133.500 | 13 |

SCHEDULE 2E

| 1955 | 1956 | 1957 | 1958 |
|---|---|---|---|
| $ 107.375 | $ 46.250 | $ 43.875 | $ 36.750 |
| 102.875 | 46.375 | 40.625 | 38.000 |
| 98.375 | 49.250 | 40.250 | 38.125 |
| 100.250 | 48.750 | 42.750 | 38.375 |
| 98.750 | 44.875 | 44.000 | 39.250 |
| 110.125 | 45.625 | 43.625 | |
| 137.000 | 47.875 | 47.500 | |
| 138.000 | 48.750 | 45.125 | |
| 48.750# | 48.000 | 43.375 | |
| 47.250# | 48.375 | 41.000 | |
| 54.000# | 48.000 | 38.750 | |
| 48.625 | 46.500 | 36.000 | |

| | | | |
|---|---|---|---|
| $ 92.000 | $ 43.000 | $ 40.125 | $ 33.750 |
| 92.250 | 42.750 | 38.500 | 33.875 |
| 89.500 | 44.500 | 38.750 | 34.000 |
| 93.375 | 43.500 | 38.625 | 34.375 |
| 93.125 | 40.250 | 42.125 | 37.125 |
| 96.250 | 41.500 | 41.250 | |
| 108.250 | 44.750 | 42.250 | |
| 124.750 | 45.750 | 41.875 | |
| 44.250# | 45.750 | 39.250 | |
| 43.625# | 45.375 | 36.625 | |
| 44.500# | 42.250 | 35.125 | |
| 45.125 | 43.500 | 33.125 | |

| | | | |
|---|---|---|---|
| $ 99.688 | $ 44.625 | $ 42.000 | $ 35.250 |
| 97.562 | 44.562 | 39.562 | 34.938 |
| 93.938 | 46.875 | 39.500 | 35.062 |
| 96.812 | 45.125 | 40.688 | 36.375 |
| 95.938 | 42.562 | 43.062 | 36.188 |
| 103.188 | 43.562 | 42.438 | |
| 122.625 | 46.312 | 44.000 | |
| 131.375 | 47.250 | 43.500 | |
| 46.500# | 46.875 | 41.438 | |
| 45.438# | 46.875 | 38.812 | |
| 49.250# | 45.125 | 36.938 | |
| 46.875 | 45.000 | 34.562 | |

mmon stock effective September 30, 1955. High, nd low prices for $5 par stock for September, were as follows:

| High | Low | Average of High and Low |
|---|---|---|
| $ 145.500 | $ 128.125 | $ 136.812 |
| 141.000 | 130.625 | 135.812 |
| 140.000 | 133.500 | 136.750 |

GOVERNMENT TRIAL EXHIBIT NO. 408-B

SCHEDULE 53

High, Low and Average of High and Low Prices of
du Pont Common Stock Traded on the New York Stock Exchange
Monthly, January 1946-May 1958

| | 1946 | 1947 | 1948 | 1949 | 1950 | 1951 | 1952 | 1953 | 1954 | 1955 | 1956 | 1957 | 1958 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **High** | | | | | | | | | | | | | |
| January | $ 194.000 | $ 191.000 | $ 187.500 | $ 187.750 | $ 62.875 | $ 87.500 | $ 92.000 | $ 100.250 | $ 110.250 | $ 175.750 | $ 232.750 | $ 192.500 | $ 185.875 |
| February | 204.000 | 194.250 | 181.000 | 187.375 | 64.500 | 90.875 | 88.750 | 100.000 | 111.500 | 176.000 | 230.750 | 188.500 | 188.500 |
| March | 200.000 | 192.000 | 175.000 | 189.250 | 68.625 | 92.750 | 89.500 | 100.000 | 116.500 | 176.000 | 234.375 | 181.500 | 182.000 |
| April | 212.000 | 188.125 | 176.000 | 195.500 | 74.375 | 97.500 | 87.000 | 97.625 | 128.000 | 188.500 | 237.000 | 195.000 | 179.000 |
| May | 219.625 | 182.750 | 184.250 | 47.500[a] | 81.250 | 102.500 | 85.875 | 98.375 | 127.750 | 199.500 | 227.000 | 203.375 | 179.500 |
| June | 227.000 | 192.500 | 187.750 | 46.625[a] | 85.375 | 96.875 | 88.000 | 95.500 | 143.500 | 231.500 | 213.750 | 202.500 | |
| July | 219.000 | 197.000 | 188.875 | 47.875 | 76.750 | 96.375 | 90.750 | 98.250 | 144.500 | 249.750 | 220.500 | 206.000 | |
| August | 217.000 | 193.750 | 177.500 | 53.000 | 83.375 | 100.250 | 90.875 | 103.750 | 142.250 | 227.500 | 216.500 | 201.750 | |
| September | 194.000 | 192.500 | 173.000 | 54.500 | 82.125 | 100.750 | 88.250 | 99.375 | 150.000 | 235.875 | 211.500 | 188.750 | |
| October | 187.250 | 192.750 | 183.250 | 58.250 | 83.000 | 97.625 | 87.375 | 104.875 | 149.000 | 220.000 | 199.750 | 183.000 | |
| November | 182.000 | 189.500 | 181.750 | 63.750 | 83.750 | 89.375 | 95.375 | 106.750 | 164.750 | 248.500 | 198.000 | 181.500 | |
| December | 191.000 | 187.750 | 185.750 | 62.375 | 84.625 | 93.000 | 97.375 | 108.375 | 170.000 | 232.750 | 196.000 | 184.000 | |
| **Low** | | | | | | | | | | | | | |
| January | $ 183.000 | $ 180.000 | $ 174.000 | $ 179.000 | $ 60.125 | $ 83.000 | $ 86.125 | $ 92.500 | $ 104.125 | $ 157.000 | $ 214.375 | $ 180.750 | $ 176.000 |
| February | 181.875 | 187.250 | 164.250 | 181.000 | 62.125 | 85.250 | 84.125 | 96.000 | 106.500 | 161.750 | 215.000 | 176.250 | 175.000 |
| March | 182.125 | 180.000 | 164.000 | 183.000 | 61.625 | 86.375 | 84.125 | 94.250 | 108.500 | 158.500 | 224.000 | 176.125 | 174.500 |
| April | 195.500 | 174.000 | 173.250 | 188.000 | 67.500 | 87.250 | 80.625 | 91.250 | 115.500 | 169.000 | 215.250 | 179.500 | 172.125 |
| May | 203.500 | 173.000 | 173.500 | 47.000[a] | 73.250 | 91.500 | 79.625 | 94.000 | 124.250 | 185.750 | 200.375 | 192.000 | 174.250 |
| June | 209.000 | 175.750 | 182.000 | 43.750[a] | 73.125 | 91.625 | 84.375 | 91.000 | 119.125 | 194.750 | 200.125 | 190.500 | |
| July | 204.000 | 189.000 | 175.000 | 45.250 | 65.500 | 91.500 | 87.000 | 94.000 | 133.000 | 224.500 | 210.500 | 193.250 | |
| August | 194.000 | 187.500 | 166.500 | 47.125 | 72.000 | 93.375 | 87.500 | 96.000 | 132.000 | 213.500 | 202.250 | 185.500 | |
| September | 169.000 | 187.000 | 166.500 | 50.000 | 77.500 | 96.125 | 84.125 | 94.000 | 132.750 | 210.000 | 192.750 | 177.000 | |
| October | 161.000 | 184.000 | 168.500 | 52.375 | 78.500 | 84.625 | 82.750 | 99.125 | 139.250 | 195.250 | 188.000 | 160.750 | |
| November | 163.500 | 184.500 | 165.000 | 57.125 | 77.000 | 82.000 | 86.000 | 99.750 | 139.500 | 214.250 | 175.125 | 168.750 | |
| December | 173.000 | 180.000 | 166.500 | 58.250 | 76.625 | 85.500 | 93.000 | 104.000 | 159.000 | 222.000 | 181.500 | 174.500 | |
| **Average of High and Low** | | | | | | | | | | | | | |
| January | $ 188.500 | $ 185.500 | $ 180.750 | $ 183.375 | $ 61.500 | $ 85.250 | $ 89.062 | $ 96.375 | $ 107.188 | $ 166.375 | $ 223.562 | $ 186.625 | $ 180.938 |
| February | 192.938 | 190.750 | 172.625 | 184.188 | 63.312 | 88.062 | 86.438 | 98.000 | 109.000 | 168.875 | 222.875 | 180.875 | 181.750 |
| March | 191.062 | 186.000 | 169.500 | 186.125 | 65.125 | 89.562 | 86.812 | 97.125 | 112.500 | 167.250 | 229.188 | 178.812 | 178.250 |
| April | 203.750 | 181.062 | 174.625 | 191.750 | 70.938 | 92.375 | 83.812 | 94.438 | 121.750 | 178.750 | 226.125 | 187.250 | 175.562 |
| May | 211.562 | 177.875 | 178.875 | 47.250[a] | 77.250 | 97.000 | 82.750 | 96.188 | 126.000 | 192.625 | 213.688 | 197.688 | 176.875 |
| June | 218.000 | 184.125 | 184.875 | 45.188[a] | 79.250 | 94.250 | 86.188 | 93.250 | 131.312 | 213.125 | 206.938 | 196.500 | |
| July | 211.500 | 193.000 | 181.938 | 46.562 | 71.125 | 93.938 | 88.875 | 96.125 | 138.750 | 237.125 | 215.500 | 199.625 | |
| August | 205.500 | 190.625 | 172.000 | 50.062 | 77.688 | 96.812 | 89.188 | 99.875 | 137.125 | 220.500 | 209.375 | 193.625 | |
| September | 181.500 | 189.750 | 169.750 | 52.250 | 79.812 | 98.438 | 86.125 | 96.688 | 141.375 | 222.938 | 202.125 | 182.875 | |
| October | 174.125 | 188.375 | 175.875 | 55.312 | 80.750 | 91.125 | 85.062 | 102.000 | 144.125 | 207.625 | 193.875 | 171.875 | |
| November | 172.750 | 187.000 | 172.375 | 60.438 | 80.375 | 85.688 | 90.688 | 103.250 | 152.125 | 231.375 | 186.562 | 175.125 | |
| December | 182.000 | 183.875 | 176.125 | 60.312 | 80.625 | 89.250 | 95.188 | 106.188 | 164.500 | 227.375 | 188.750 | 179.250 | |

[a] 4-for-1 split of $20 par common stock effective June 15, 1949. High, low, and average of high and low prices for $20 par stock for May and June 1949 were as follows:

| | High | Low | Average of High and Low |
|---|---|---|---|
| May 1949 | $ 192.500 | $ 186.500 | $ 189.500 |
| June 1949 | 185.750 | 172.500 | 179.125 |

Source: William B. Dana Company, Bank and Quotation Record, monthly issues, 1946-1958

[fol. 3243]

GOVERNMENT TRIAL EXHIBIT NO. 409

**Market Value of General Motors and du Pont Common Stock Traded as a Per Cent of Market Value of Total Shares Traded on the New York Stock Exchange Monthly, January 1946-May 1958**

| | 1946 | 1947 | 1948 | 1949 | 1950 | 1951 | 1952 | 1953 | 1954 | 1955 | 1 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Motors as a Per Cent of New York Stock Exchange Market Value of Shares Traded | | | | | | | | | | |
| January | 0.939 % | 1.273 % | 0.767 % | 1.108 % | 1.223 % | 1.139 % | 0.725 % | 0.996 % | 1.356 % | 1.293 % | 2. |
| February | 1.121 | 1.243 | 1.240 | 1.646 | 1.522 | 0.969 | 0.824 | 1.206 | 0.888 | 1.147 | 1. |
| March | 1.158 | 1.514 | 0.957 | 1.162 | 0.936 | 1.213 | 1.172 | 0.930 | 0.958 | 1.324 | 0. |
| April | 0.708 | 1.020 | 0.719 | 0.944 | 1.701 | 1.139 | 0.859 | 1.221 | 1.071 | 1.144 | 0. |
| May | 0.960 | 1.512 | 0.981 | 1.009 | 2.063 | 1.292 | 0.922 | 0.869 | 1.159 | 1.018 | 1. |
| June | 0.828 | 1.202 | 0.831 | 1.540 | 3.739 | 1.094 | 1.026 | 1.271 | 0.939 | 1.414 | 1. |
| July | 1.060 | 1.244 | 0.936 | 1.514 | 2.881 | 0.895 | 0.852 | 1.334 | 1.181 | 2.905 | 0. |
| August | 0.851 | 0.937 | 1.290 | 1.145 | 2.381 | 0.898 | 0.980 | 1.104 | 0.893 | 1.645 | 0. |
| September | 1.227 | 1.004 | 1.302 | 1.255 | 1.795 | 0.723 | 1.005 | 1.124 | 1.291 | 3.583 | 0. |
| October | 1.202 | 1.118 | 1.397 | 1.380 | 2.419 | 0.855 | 0.949 | 1.036 | 1.137 | 2.603 | 0. |
| November | 1.164 | 0.773 | 1.661 | 2.064 | 2.642 | 0.801 | 1.117 | 0.998 | 0.961 | 2.809 | 0. |
| December | 1.296 | 0.830 | 0.895 | 1.044 | 1.565 | 0.788 | 0.992 | 0.706 | 0.805 | 1.635 | 0. |
| | du Pont as a Per Cent of New York Stock Exchange Market Value of Shares Traded | | | | | | | | | | |
| January | 0.231 % | 0.347 % | 0.417 % | 0.874 % | 0.799 % | 0.599 % | 0.460 % | 0.598 % | 0.659 % | 0.447 % | 0. |
| February | 0.232 | 0.328 | 0.447 | 0.882 | 0.747 | 0.480 | 0.470 | 0.658 | 0.486 | 0.347 | 1. |
| March | 0.264 | 0.411 | 0.473 | 1.298 | 0.868 | 0.576 | 0.465 | 0.521 | 0.503 | 0.381 | 0. |
| April | 0.302 | 0.399 | 0.508 | 0.804 | 0.718 | 0.673 | 0.464 | 0.640 | 0.539 | 0.372 | 0. |
| May | 0.312 | 0.494 | 0.434 | 0.884 | 0.799 | 0.618 | 0.624 | 0.674 | 0.456 | 0.523 | 0. |
| June | 0.336 | 0.635 | 0.346 | 1.188 | 1.212 | 0.647 | 0.570 | 0.538 | 0.795 | 0.551 | 0. |
| July | 0.248 | 0.436 | 0.337 | 1.178 | 1.140 | 0.862 | 0.615 | 0.849 | 0.701 | 1.020 | 0. |
| August | 0.247 | 0.397 | 0.397 | 1.607 | 0.944 | 0.672 | 0.382 | 1.025 | 0.368 | 0.705 | 0. |
| September | 0.429 | 0.462 | 0.507 | 1.389 | 0.728 | 0.446 | 0.586 | 0.632 | 0.560 | 0.841 | 0. |
| October | 0.412 | 0.443 | 0.907 | 1.372 | 0.732 | 0.585 | 0.583 | 1.281 | 0.427 | 0.775 | 0. |
| November | 0.386 | 0.392 | 0.468 | 1.504 | 0.727 | 0.626 | 0.800 | 1.114 | 0.541 | 1.523 | 0. |
| December | 0.296 | 0.353 | 0.620 | 0.860 | 0.633 | 0.578 | 0.446 | 0.578 | 0.389 | 0.683 | 0. |

Source: Derived from data in Schedules 20 and 55.

n Stock Traded
e New York Stock Exchange

| 1953 | 1954 | 1955 | 1956 | 1957 | 1958 |
|---|---|---|---|---|---|
| **nge Market Value of Shares Traded** | | | | | |
| 0.996 % | 1.356 % | 1.293 % | 2.202 % | 0.922 % | 0.883 % |
| 1.206 | 0.888 | 1.147 | 1.460 | 1.284 | 0.866 |
| 0.930 | 0.958 | 1.324 | 0.954 | 0.920 | 0.838 |
| 1.221 | 1.071 | 1.144 | 0.947 | 0.855 | 0.992 |
| 0.869 | 1.159 | 1.018 | 1.390 | 0.762 | 0.774 |
| 1.271 | 0.939 | 1.414 | 1.201 | 0.790 | |
| 1.334 | 1.181 | 2.905 | 0.935 | 1.054 | |
| 1.104 | 0.893 | 1.645 | 0.788 | 0.907 | |
| 1.124 | 1.291 | 3.583 | 0.964 | 1.169 | |
| 1.036 | 1.137 | 2.603 | 0.974 | 1.070 | |
| 0.998 | 0.961 | 2.809 | 0.868 | 1.176 | |
| 0.706 | 0.805 | 1.635 | 0.814 | 1.040 | |
| **Market Value of Shares Traded** | | | | | |
| 0.598 % | 0.659 % | 0.447 % | 0.803 % | 0.486 % | 0.520 % |
| 0.658 | 0.486 | 0.347 | 1.095 | 0.592 | 0.509 |
| 0.521 | 0.503 | 0.381 | 0.597 | 0.550 | 0.561 |
| 0.640 | 0.539 | 0.372 | 0.733 | 0.632 | 0.655 |
| 0.674 | 0.456 | 0.523 | 0.702 | 0.520 | 0.553 |
| 0.538 | 0.795 | 0.551 | 0.722 | 0.522 | |
| 0.849 | 0.701 | 1.020 | 0.547 | 0.552 | |
| 1.025 | 0.368 | 0.705 | 0.430 | 0.571 | |
| 0.632 | 0.560 | 0.841 | 0.663 | 0.579 | |
| 1.281 | 0.427 | 0.775 | 0.591 | 0.603 | |
| 1.114 | 0.541 | 1.523 | 0.752 | 0.591 | |
| 0.578 | 0.389 | 0.683 | 0.901 | 0.453 | |

1 55.

[fol. 3244] GOVERNMENT TRIAL EXHIBIT No. 432

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 49 C 1071

UNITED STATES OF AMERICA, PLAINTIEF,

*v.*

E. I. DU PONT DE NEMOURS AND COMPANY, GENERAL MOTORS CORPORATION, CHRISTIANA SECURITIES COMPANY AND DELAWARE REALTY AND INVESTMENT CORPORATION,

DEFENDANTS

## Interrogatories Propounded To The Defendant General Motors Corporation

Plaintiff, pursuant to Rule 33 of the Federal Rules of Civil Procedure, as amended, hereby demands that the defendant General Motors by its duly authorized officers, serve upon the plaintiff sworn answers to the following interrogatories.

1. For each of the calendar years 1955, 1956, 1957 and the period January 1, 1958 through September 30, 1958, state the dollar amount of purchases by General Motors from E. I. du Pont de Nemours and Company.

2. With respect to the stockholders of General Motors as of any date after January 1, 1957, state:

(a) The number holding 1-25 shares;
[fol. 3245] (b) The number holding 26-100 shares;
(c) The number holding 101-200 shares;
(d) The number holding 201-500 shares;
(e) The number holding 501-1000 shares;
(f) The number holding 1001-5000 shares;
(g) The total number of shares of General Motors stock held by the persons within each of the above categories.
(h) The total number of shares of General Motors stock outstanding at the time of the above calculations.

[fol. 3258]

GOVERNMENT TRIAL EXHIBIT No. 438

ALUMINIUM LIMITED

Data With Reference to Shareholdings by Stockholders of ALCOA Who Became Subject to Provisions of Stock Disposal Judgment

| | Number of Old Shares | Equivalent Number of Present Shares | Per Cent of Aluminium Limited Shares Outstanding |
|---|---|---|---|
| Number of shares of common stock of Aluminium Ltd. held as of July 6, 1950 (Date of Final Judgment, United States v. Aluminum Company of America et al.) by stockholders of ALCOA who became subject to provisions of Stock Disposal Judgment dated January 16, 1951 | 1,920,830 | 11,524,980 | 51.6% |
| Number of shares of Limited disposed of between July 6, 1950 and January 16, 1951 [1] | 108,660 | 651,960 | 2.9% |
| Number of shares of Limited held as of January 16, 1951 by stockholders required (under terms of the Stock Disposal Judgment) to dispose of all such shares within a ten year period | 1,287,975 | 7,727,850 | 34.6% |
| Number of shares of Limited held as of January 16, 1951 by stockholders whose voting rights in Limited were restricted by the terms of the Stock Disposal Judgment | 524,195 | 3,145,170 | 14.1% |
| Total | 1,920,830 | 11,524,980 | 51.6% |

Number of Shares of Common Stock of Limited Held as of December 31, 1958

(1) By stockholders required to sell before January 16, 1961 — 931,754 shares (Equal to 3.08% of Limited stock outstanding on 12/31/58)

(2) By stockholders not required to sell but who are enjoined from voting their stock — 2,555,469 shares (Equal to 8.44% of Limited stock outstanding on 12/31/58)

3. State separately the number of shares of General Motors capital stock purchased by or for General Motors for any purpose during each of the years from 1946 through 1958, and during the period January 1, 1958 through September 30, 1958.

4. State separately the number of shares of General Motors capital stock purchased for the General Motors Savings-Stock Purchase Program during each of the years in which the program has been in operation and state the total amount of such capital stock which was newly issued stock.

5. State the total amount of General Motors capital stock which General Motors would be obligated to deliver at any time in the future under the earning out provisions of its bonus plan.

6. State the total amount of General Motors capital stock which General Motors now expects to acquire during the five year period beginning January 1, 1959.

——, ——, Attorney Department of Justice.

---

[fol. 3246] GOVERNMENT TRIAL EXHIBIT No. 433

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 49 C 1071

UNITED STATES OF AMERICA, PLAINTIFF,

*v.*

E. I. DU PONT DE NEMOURS AND COMPANY, ET AL., DEFENDANTS

Answer of General Motors Corporation to Certain of the Interrogatories Propounded by Plaintiff

Now comes General Motors Corporation, and in answer to certain of the interrogatories propounded to it by plaintiff on or about November 28, 1958, states as follows:

II

Answer to Second Interrogatory

The answers to subparagraphs (a) to (g) of the second interrogatory as of the date of August 14, 1958, are as [fol. 3247] follows:

| Share Group | Number of Stockholders | Total Number Shares Held |
|---|---|---|
| 1- 25 shares held | 190,186 | 2,428,074 |
| 26- 100 shares held | 271,565 | 16,873,405 |
| 101- 200 shares held | 110,405 | 16,636,117 |
| 201- 500 shares held | 89,795 | 28,436,554 |
| 501-1,000 shares held | 37,122 | 25,311,249 |
| 1,001-5,000 shares held | 16,966 | 31,709,127 |

The answer to subparagraph (h) of the second interrogatory is 279,691,509 shares.

III

Answer to Third Interrogatory

The answers to the third interrogatory are as follows:

| Year | Type of Stock | Number of Shares Purchased |
|---|---|---|
| 1946 | $10 par | 1,000 |
| 1947 | $10 par | 98,627 |
| 1948 | $10 par | 124,205 |
| 1949 | $10 par | 176,806 |
| [fol. 3248] 1950 | $10 par | 207,004 |
| 1951 | $ 5 par | 223,200 |
| 1952 | $ 5 par | 476,408 |
| 1953 | $ 5 par | 549,007 |
| 1954 | $ 5 par | 541,309 |
| 1955 | $ 5 par | 522,207 |
| 1956 | $ 5 par | 357,710 |
| 1957 | $ 1⅔ par | 182,660 |
| 1958 (9 months) | $ 1⅔ par | 1,024,236 |
| | $ 1⅔ par | 1,024,751 |
| | $ 1⅔ par | 410,998 |

## IV

### Answer to Fourth Interrogatory

The answers to the fourth interrogatory are as follows:

| Period of Time | Number of Shares |
|---|---|
| Three months ended December 31, 1955 | 150,750 |
| Twelve months ended December 31, 1956 | 986,873 |
| Twelve months ended December 31, 1957 | 1,167,973 |
| Twelve months ended December 31, 1958 | 1,011,358 |

[fol. 3249] The total amount of such capital stock which was newly issued was 3,316,954 shares.

## V

### Answer to Fifth Interrogatory

The answers to the fifth interrogatory are as follows:

| Delivery Date | Number of Shares as of October 31, 1958 |
|---|---|
| January 1959 | 823,579 |
| January 1960 | 515,968 |
| January 1961 | 290,627 |
| January 1962 | 126,553 |

## VI

### Answer to Sixth Interrogatory

General Motors Corporation has no knowledge or information at the present time as to the total amount of General Motors capital stock which General Motors ex-
[fol. 3250] pects to acquire during the five-year period beginning January 1, 1959.

Henry M. Hogan, Leo F. Tierney, Attorneys for General Motors Corporation.

Henry M. Hogan, General Counsel, General Motors Corporation, 3044 West Grand Boulevard, Detroit 2, Michigan.

Leo F. Tierney, Mayor, Friedlich, Spiess, Tierney, Brown & Platt, 231 South LaSalle Street, Chicago 4, Illinois.

Dated: December 15, 1958.

STATE OF MICHIGAN,
County of Wayne, ss:

J. C. Davidson, being first duly sworn, deposes and says that he is an Assistant Secretary of General Motors Corporation, defendant in the above cause, that he has read [fol. 3251] the foregoing Answer to Interrogatories, and that the same are true to the best of his knowledge, information and belief.

J. C. Davidson, [seal.]

Subscribed and sworn to before me this 12th day of December, 1958.

Margaret D. Mengel, Notary Public, Wayne County, Michigan.

My Commission Expires March 22, 1960.

---

[fol. 3252] GOVERNMENT TRIAL EXHIBIT No. 434

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 49 C 1071

UNITED STATES OF AMERICA, PLAINTIFF,

*v.*

E. I. DU PONT DE NEMOURS AND COMPANY ET AL., DEFENDANTS

Answer of Christiana Securities Company to Interrogatories

Answer of defendant Christiana Securities Company to Interrogatories served on it by plaintiff on November 26, 1958.

Interrogatory No. 1

Christiana holds 3.745% of the outstanding common stock of Wilmington Trust Company at the present date.

## Interrogatory No. 2

Christiana holds 100% of the outstanding common stock of The News-Journal Company at the present date.

## Interrogatory No. 3

The approximate amounts of Federal tax paid by Christiana with respect to dividends received by it, for the [fol. 3253] years 1948 through 1957, are as follows:

| | |
|---|---|
| 1948 | $1,719,258 |
| 1949 | 2,406,658 |
| 1950 | 4,173,144 |
| 1951 | 3,343,889 |
| 1952 | 3,424,688 |
| 1953 | 3,656,905 |
| 1954 | 5,295,920 |
| 1955 | 6,746,484 |
| 1956 | 6,263,746 |
| 1957 | 6,264,178 |

## Interrogatory No. 4

The "earnings and profits" of Christiana for Federal income tax purposes as at December 31, 1957 are believed to be approximately $71,528,479. The Interrogatory requests the "earnings and profits" as "defined in section 535 of the Internal Revenue Code of 1954." However, that section contains no definition of the term. It is assumed that the Interrogatory is intended to refer to "earnings and profits" computed in accordance with the relevant provisions of the Internal Revenue Code of 1954 and corresponding provisions of prior tax laws.

## Interrogatory No. 5

*Subparagraph (a).* The number of shares of Christiana common stock administered through any form of trust or estate by Wilmington Trust Company of which defendant has records are:

[fol. 3254] (1) in sum approximately 27,921 shares;

(2) for the beneficial interest of persons who are also beneficial stockholders of Delaware Realty and Investment Company, approximately 18,275 shares.

The figure in (2) above was computed as a result of questionnaires sent to Delaware shareholders for the purpose

of compiling the List of Beneficial Owners, on June 25, 1958, of Delaware Realty and Investment Company previously furnished to plaintiff. The figure in (1) above was computed by adding to the figure in (2) the number of Christiana shares held of record by Wilmington Trust Company in a fiduciary capacity, less shares believed to overlap with the figure given in (2) above. The holdings of charitable institutions shown on the above-mentioned List as beneficial shareholders of Delaware are not included in the figure in (2).

*Subparagraph (b).* Defendant has no information as to the number of shares, if any, administered by the "Jacksonville Trust Company", which is not a stockholder of record.

Interrogatory No. 6

*Subparagraph (a).* Defendant held as of January 1, 1958 the following amounts of stock in companies whose shares are regularly traded on a recognized stock exchange or over the counter:

(1) E. I. du Pont de Nemours and Company, 12,199,200 shares of common stock (New York Stock Exchange)
(2) General Motors Corporation, 535,500 shares of [fol. 3255] common stock (New York Stock Exchange).

*Subparagraph (b).* The other assets held by defendant as of January 1, 1958, were:

(1) 8,652 shares of common stock of Wilmington Trust Company. The last bid price quoted locally on December 31, 1957 was $186.00 per share, indicating an aggregate market value of $1,609,272.
(2) 7,460 shares of common stock of The News-Journal Company (wholly owned). The books of that company showed net assets of approximately $2,900,000 on December 31, 1957, which amount is considered to represent fair value on that date.
(3) Cash, $6,166,136.

Christiana Securities Company by /s/ E. H. Tinney, Secretary.

Subscribed and sworn to before me this 12th day of January, 1959.

/s/ Marion K. Graham, Notary Public.

[Notary Seal Wilmington, Delaware]

---

[fol. 3256] GOVERNMENT TRIAL EXHIBIT No. 435

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 49 C 1071

UNITED STATES OF AMERICA, Plaintiff,

v.

E. I. DU PONT DE NEMOURS AND COMPANY, et al., Defendants

Answer of Delaware Realty and Investment Company to Interrogatories

Answer of defendant Delaware Realty and Investment Company to Interrogatories served on it by plaintiff on November 26, 1958.

Interrogatory No. 1

*Subparagraph (a).* Defendant held as of January 1, 1958 the following amounts of stock in companies whose shares are regularly traded on a recognized stock exchange or over the counter:

(1) Christiana Securities Company, 43,500 shares of Preferred, 7% Cumulative Stock and 49,000 shares of Common Stock (over the counter).

(2) E. I. du Pont de Nemours & Company, 16,256 shares [fol. 3257] of Preferred, $4.50 Cumulative Stock and 1,217,920 shares of Common Stock (New York Stock Exchange).

(3) Hercules Powder Company, 300,000 shares of Common Stock (New York Stock Exchange).

*Subparagraph (b).* The only other asset held by defendant as of January 1, 1958 was $1,676,911. in cash.

Interrogatory No. 2

*Subparagraph (a).* The number of shares of Delaware common stock administered through any form of trust or estate by Wilmington Trust Company of which defendant has records are:

(1) in sum, approximately 314,211 shares;
(2) for the beneficial interest of stockholders of Delaware, approximately 314,211 shares.

These figures are identical since "stockholders of Delaware" is interpreted to include persons who have a beneficial interest in Delaware stock. These figures include shares held for the beneficial interest of charitable institutions.

*Subparagraph (b).* Defendant has no information as to the number of shares, if any, administered by the "Jacksonville Trust Company," which is not a stockholder of record.

Delaware Realty and Investment Company. By
/s/ E. H. Tinney, Secretary.

Subscribed and sworn to before me this 12th day of January, 1959.

/s/ Marion K. Graham, Notary Public.

[Notarial Seal Wilmington, Delaware]

* The number of shares required to be sold is equal to 4.17% of the Common stock of Limited outstanding at the time of the Stock Disposal Judgment. As of that date Limited had the equivalent of 22,332,300 present shares. As of the close of 1958 Limited had 30,283,289 shares outstanding. The increase in shares outstanding during this period is 35.6% or 7,950,989 shares.

Market Value:

The Stock Disposal Judgment contemplated a divestiture equal to 8,379,810 present common shares of Limited. (This is the aggregate of the stock ordered to be sold and stock sold between July 6, 1950 and January 16, 1951.) The market value of 8,379,810 present shares of Limited was as follows, based upon closing prices for the dates indicated:

(1) July 31, 1950 @ $10.50 per share - $ 87,988,005
(2) Jan. 31, 1951 @ $16.0833 per share - 134,774,998
(3) Dec. 31, 1958 @ $33.00 per share - 276,533,730

The market value of 7,950,989 new shares of Limited issued subsequent to the Stock Disposal Judgment was $262,382,637 as of December 31, 1958.

[1] The Stock Disposal Judgment at page 3 and again at page 6 notes that 104,460 "old shares" had been disposed of after July 6, 1950 and prior to January 16, 1951. The correspondence between Mr. Leon C. Hickman, Vice President and General Counsel of the Aluminum Company of America, and the Trustees appointed by the Court indicates that an additional 4,200 "old shares" had been disposed of prior to January 16, 1951. Through inadvertence the dispositions of this additional block of stock had not been reported to the Court prior to the entry of the Stock Disposal Judgment.

Sources:

(a) Stock Disposal Judgment.
(b) Reports filed with Clerk of U.S. District Court for Southern District of New York by Leon C. Hickman.
(c) Moody's Manual.
(d) Bank and Quotations Record.

2843

2848

[fol. 3265]

## Government Trial Exhibit No. 445

### Common Stock of Aluminium Limited

Closing Prices at End of Month on New York Stock Exchange, 1950–1958

(Prices Are Shown on Present Share Basis and Give Effect to the Following Stock Splits: 2-for-1 in September 1952 and 3-for-1 in May 1957.)

| Month | 1950 | 1951 | 1952 | 1953 | 1954 | 1955 | 1956 | 1957 | 1958 |
|---|---|---|---|---|---|---|---|---|---|
| Jan. | $ 8.0208 | $16.0833 | $19.7500 | $17.8750 | $16.3333 | $25.6667 | $33.8333 | $40.0000 | $29.1250 |
| Feb. | 8.1667 | 15.2500 | 18.6667 | 16.8750 | 17.3333 | 28.1667 | 35.4583 | 39.5417 | 27.5000 |
| Mar. | 8.2292 | 14.5000 | 18.000 | 16.6250 | 18.7907 | 27.5833 | 40.0000 | 42.0417 | 28.6250 |
| Apr. | 8.9583 | 15.1250 | 16.6250 | 15.0000 | 19.0833 | 31.2083 | 43.5000 | 46.1667 | 27.0000 |
| May | 8.8958 | 14.5625 | 17.3333 | 15.1667 | 19.5833 | 32.2500 | 41.6667 | 46.5000 | 27.1250 |
| June | 9.2083 | 14.2500 | 17.2500 | 15.1667 | 21.2083 | 35.0833 | 45.3333 | 48.2500 | 26.6250 |
| July | 10.5000 | 14.9167 | 18.2500 | 16.2083 | 23.0000 | 35.0000 | 47.8333 | 48.7500 | 29.6250 |
| Aug. | 13.3333 | 16.0000 | 17.9792 | 15.2500 | 20.9167 | 35.0833 | 39.4167 | 41.1250 | 28.8750 |
| Sept. | 13.1667 | 17.0417 | 17.2500 | 14.5833 | 27.3333 | 36.4583 | 41.1667 | 36.3750 | 32.1250 |
| Oct. | 12.7083 | 16.4167 | 17.2917 | 15.9167 | 21.3333 | 33.7500 | 40.6667 | 31.3750 | 33.3750 |
| Nov. | 13.3333 | 16.1250 | 17.2917 | 16.5417 | 23.9167 | 36.0833 | 37.8333 | 31.2500 | 32.0000 |
| Dec. | 16.1250 | 17.6667 | 17.2083 | 16.0833 | 25.9167 | 35.8333 | 40.0000 | 28.6250 | 33.0000 |

Source: Bank & Quotation Record.

[fol. 3259] GOVERNMENT TRIAL EXHIBIT NO. 439

ALUMINIUM LIMITED

(1) Number of Common Shares Sold Pursuant to Stock Disposal Judgment, By Years, 1951–1958

(2) Number of New Common Shares Offered Through Subscription Rights, By Years, 1951–1958

| Year | Col. 1 Common Shares Sold Pursuant to Stock Disposal Judgment[1] | Col. 2 New Common Stock Offered to Shareholders of Ltd.[2] | Col. 3 Total of Columns 1 and 2 |
|---|---|---|---|
| | Number of Shares, Present Share Basis (Gives Effect to Stock Splits as Follows: 2-for-1 in September 1952 3-for-1 in May 1957) | | |
| 1951 | 2,082,000 | 2,233,230 | 4,315,230 |
| 1952 | 1,071,300 | — | 1,071,300 |
| 1953 | 659,700 | 2,455,971 | 3,115,671 |
| 1954 | 630,900 | — | 630,900 |
| 1955 | 612,000 | 2,712,942 | 3,324,942 |
| 1956 | 756,303 | — | 756,303 |
| 1957 | 248,736 | — | 248,736 |
| 1958 | 577,356 | — | 577,356 |
| Total | 6,638,295 | 7,402,143 | 14,040,438 |

[1] Data regarding the number of shares sold has been compiled from reports submitted by Leon E. Hickman, Vice President & General Counsel of the Aluminum Company of America, to the Clerk of the United States District Court For the Southern District of New York. The figure for the year 1951 includes the equivalent of 300,000 present shares sold by "Restricted Stockholders" as that term is used in the Stock Disposal Judgment. All other sales in the column were made by "Selling Shareholders", i.e. persons required to dispose of stock under the terms of the Judgment.

[2] Additional detail regarding these "rights offerings" is as follows:

| Record Date | Expiration Date | Basis | Subscription Price Per Share |
|---|---|---|---|
| 10–19–51 | 11– 8–51 | 1-for-10 | $10.83 (Canadian) |
| 4–24–53 | 5–15–53 | 1-for-10 | 11.33 (U. S.) |
| 1– 7–55 | 1–31–55 | 1-for-10 | 15.87 (U. S.) |

The subscription price per share is stated in terms of present common stock of Aluminium Limited.

Source: Moody's Manual.

(Here follow 2 Photolithographs, side folios 3260, 3261)

ALUMINIUM LIMITED

Number Of Shares Of Common Stock Disposed Of By Shareholders Subject To The Stock Disposal Judgment, Classified According To Method Of Disposal. (1951 Through Third Quarter 1957)

| Period | Methods Of Stock Disposal: Public Offering | Stock Exchange Sale | Private Placement | Total Sales | Gifts | Total Stock Disposals |
|---|---|---|---|---|---|---|
| | Number Of Common Shares (Present Share Basis) | | | | | |
| 1951 | 2,076,000* | 6,900 | - | 2,082,000 | 14,658 | 2,096,658 |
| 1st Q '52 | 753,000 | - | - | 753,000 | 21,948 | 774,948 |
| 2nd Q '52 | 25,200 | 27,000 | - | 52,200 | - | 52,200 |
| 3rd Q '52 | 177,600 | - | - | 177,600 | 300 | 177,900 |
| 4th Q '52) 1st Q '53) | 208,500 | 115,800 | 14,700 | 339,000 | 7,479 | 346,479** |
| 2nd Q '53 | 128,700 | - | - | 128,700 | - | 128,700 |
| 3rd Q '53 | 122,400 | - | - | 122,400 | 300 | 122,700 |
| 4th Q '53 | - | 102,100 | - | 102,100 | | |
| 1st Q '54 | - | 200,400 | 25,500 | 225,900 | - | 225,900 |
| 2nd Q '54 | - | 165,000 | 6,000 | 171,000 | 600 | 171,600 |
| 3rd Q '54 | - | 144,000 | - | 144,000 | - | 144,000 |
| Q '54 | - | 90,000 | - | 90,000 | 47,625 | 137,625 |
| 1st Q '55 | - | - | - | - | 81,450 | 81,450 |
| 2nd Q '55 | 14,400 | - | - | 14,400 | 990 | 15,390 |
| 3rd Q '55 | 594,300 | - | - | 594,300 | 1,485 | 595,785 |
| 4th Q '55 | - | 3,300 | - | 3,300 | 36,816 | 40,116 |
| 1st Q '56 | 330,384 | 56,700 | 114,783 | 501,867 | 33,870 | 535,737 |
| 2nd Q '56 | 140,700 | 24,150 | - | 164,850 | 11,946 | 176,796 |
| 3rd Q '56 | 31,272 | 15,000 | 32,814 | 79,086 | 5,685 | 84,771 |
| 4th Q '56 | - | 10,500 | - | 10,500 | 42,771 | 53,271 |
| 1st Q '57 | - | 13,500 | - | 13,500 | 17,520 | 31,020 |
| 2nd Q '57 | 204,490 | 15,075 | - | 219,565 | 11,595 | 231,160 |
| 3rd Q '57 | 7,300 | 1,300 | - | 8,600 | 17,700 | 26,300 |
| Total 81 Mos. | 4,814,246 | 1,045,825 | 193,797 | 6,053,868 | 354,738 | 6,408,606 |

* Includes the equivalent of 300,000 present shares sold by "Restricted Shareholders" as that term is used in the Corporate Trustee's reports. All other stock disposals set forth in the above compilation were made by shareholders required to dispose of Limited stock under the terms of the Stock Disposal Judgment.

** Exclusive of the equivalent of 3,000 present shares held by Charles B. Fox at the time of his death in February 1953. Although Mr. Fox was listed in the Stock Disposal Judgment as a person required to dispose of his common stock of Limited, this requirement did not apply to his estate.

Note: The figures shown above have been compiled from reports submitted to the Attorney General by the Corporate Trustee (The Chemical Corn Exchange Bank). To the extent that it has been possible, information regarding the method of stock disposal has been compiled by three month intervals. However, lack of specific information in certain of the trustee's reports has made it necessary to show in the above compilation an annual figure for 1951 and a six month aggregate for the period 10/1/52 - 3/31/53.

The last report filed by the Chemical Corn Exchange Bank covers stock divestiture data through September 30, 1957. The trusteeship was terminated in December 1957. On the basis of quarterly reports filed by Mr. Leon E. Hickman, Vice President & General Counsel of the Aluminum Company of America, it is possible to extend the above tabulation as follows:

| Period | Public Offering | Stock Exchange Sale # | Private Placement | Total Sales | Gifts | Total Stock Disposals |
|---|---|---|---|---|---|---|
| 4th Q '57 | - | 7,071 | - | 7,071 | 44,075 | 51,146 |
| 1st Q '58 | - | 18,600 | - | 18,600 | 14,360 | 32,960 |
| 2nd Q '58 | 300,000 | 1,000 | - | 301,000 | 4,160 | 305,160 |
| 3rd Q '58 | - | 3,500 | - | 3,500 | 6,560 | 10,060 |
| 4th Q '58 | 235,156 | 19,100 | - | 254,256 | 31,325 | 285,581 |
| 8 Year Total | 5,349,402 | 1,095,096 | 193,797 | 6,638,295 | 455,218 | 7,093,513 ** |

# The Hickman reports do not necessarily indicate that all of these sales were made on stock exchanges. A portion of the sales may have been made in the over-the-counter market. However, all sales known to have been made through "special offerings" have been excluded from this column.

With reference to stockholders required to dispose of their Limited common stock before January 16, 1961, the reconciliation between (a) changes in shares held and (b) the eight-year aggregate disposal figure given above is as follows:

| | No. of Shares Present Share Basis |
|---|---|
| Held, Jan. 16, 1951 | 7,727,850 |
| Purchased During Period | 417 |
| | 7,728,267 |
| Held Dec. 31, 1958 | 931,754 |
| Decrease in Holdings | 6,796,513 |

| | No. of Shares Present Share Basis |
|---|---|
| Eight-Year Aggregate | 7,093,513 |
| Deduct Shares Sold By Restricted Shareholders | 300,000 |
| | 6,793,513 |
| Add Shares, C. B. Fox Estate | 3,000 |
| | 6,796,513 |

ALUMINIUM LIMITED

(1) Number Of Shares Of Aluminium Limited Common Stock Sold On Stock Exchanges By Shareholders Subject To The Stock Disposal Judgment Compared With

(2) Round Lot Trading Volume For Aluminium Limited Common Stock On The New York Stock Exchange, 1951 Through Third Quarter Of 1957.

| Period | Aluminium Limited Common Stock Col. 1 Stock Exchange Sales By Selling Shareholders | Col. 2 Round Lot Trading Volume On New York Stock Exchange | Col. 3 Percentage Relationship Of Column 1 To Column 2 |
|---|---|---|---|
| | Number Of Common Shares (Present Share Basis) | | |
| 1951 | 6,000 | 2,259,600 | .27% |
| 1st Q '52 | - | 775,200 | - |
| 2nd Q '52 | 27,000 | 562,200 | 4.80% |
| 3rd Q '52 | - | 670,800 | - |
| 4th Q '52) | | | |
| 1st Q '53) | 115,800 | 819,600 | 14.13% |
| 2nd Q '53 | - | 856,200 | - |
| 3rd Q '53 | - | 540,900 | - |
| 4th Q '53 | 158,100 | 598,200 | 26.43% |
| 1st Q '54 | 200,400 | 861,900 | 23.25% |
| 2nd Q '54 | 165,000 | 875,100 | 18.85% |
| 3rd Q '54 | 144,000 | 769,800 | 18.71% |
| 4th Q '54 | 90,000 | 867,300 | 10.38% |
| 1st Q '55 | - | 1,071,300 | - |
| 2nd Q '55 | - | 787,200 | - |
| 3rd Q '55 | - | 896,100 | - |
| 4th Q '55 | 3,300 | 683,700 | .48% |
| 1st Q '56 | 56,700 | 816,000 | 6.95% |
| 2nd Q '56 | 24,150 | 1,026,600 | 2.35% |
| 3rd Q '56 | 15,000 | 706,800 | 2.12% |
| 4th Q '56 | 10,500 | 698,400 | 1.50% |
| 1st Q '57 | 13,500 | 631,500 | 2.14% |
| 2nd Q '57 | 15,075 | 635,300 | 2.37% |
| 3rd Q '57 | 1,300 | 714,400 | .18% |
| Total 81 Mos. | 1,045,825 | 19,124,100 | 5.48% |

Note: The figures shown in Column 1, above, have been compiled from reports submitted to the Attorney General by the Corporate Trustee (The Chemical Corn Exchange Bank). To the extent that it has been possible, information regarding Aluminium Limited stock divestiture through sale on exchanges has been compiled by three month intervals. However, lack of specific information in certain of the Trustee's reports has made it necessary to show in the above compilation an annual figure for 1951 and a six month aggregate for the period 10/1/52 - 3/31/53.

The last report filed by the Chemical Corn Exchange Bank covers stock divestiture data through September 30, 1957. The trusteeship was terminated in December 1957. On the basis of quarterly reports filed by Mr. Leon E. Hickman, Vice President & General Counsel of the Aluminum Company of America, it is possible to extend the above table as follows:

| | Aluminium Limited Common Stock | | |
|---|---|---|---|
| Period | (1) Stock Exchange Sales By Selling Shareholders * | (2) Trading Volume On New York Stock Exchange | Percentage Relationship Of Column 1 To Column 2 |
| 4th Q '57 | 7,071 | 1,079,700 | .65% |
| 1st Q '58 | 18,600 | 779,900 | 2.38% |
| 2nd Q '58 | 1,000 | 954,800 | .10% |
| 3rd Q '58 | 3,500 | 1,616,500 | .22% |
| 4th Q '58 | 19,100 | 2,130,800 | .90% |

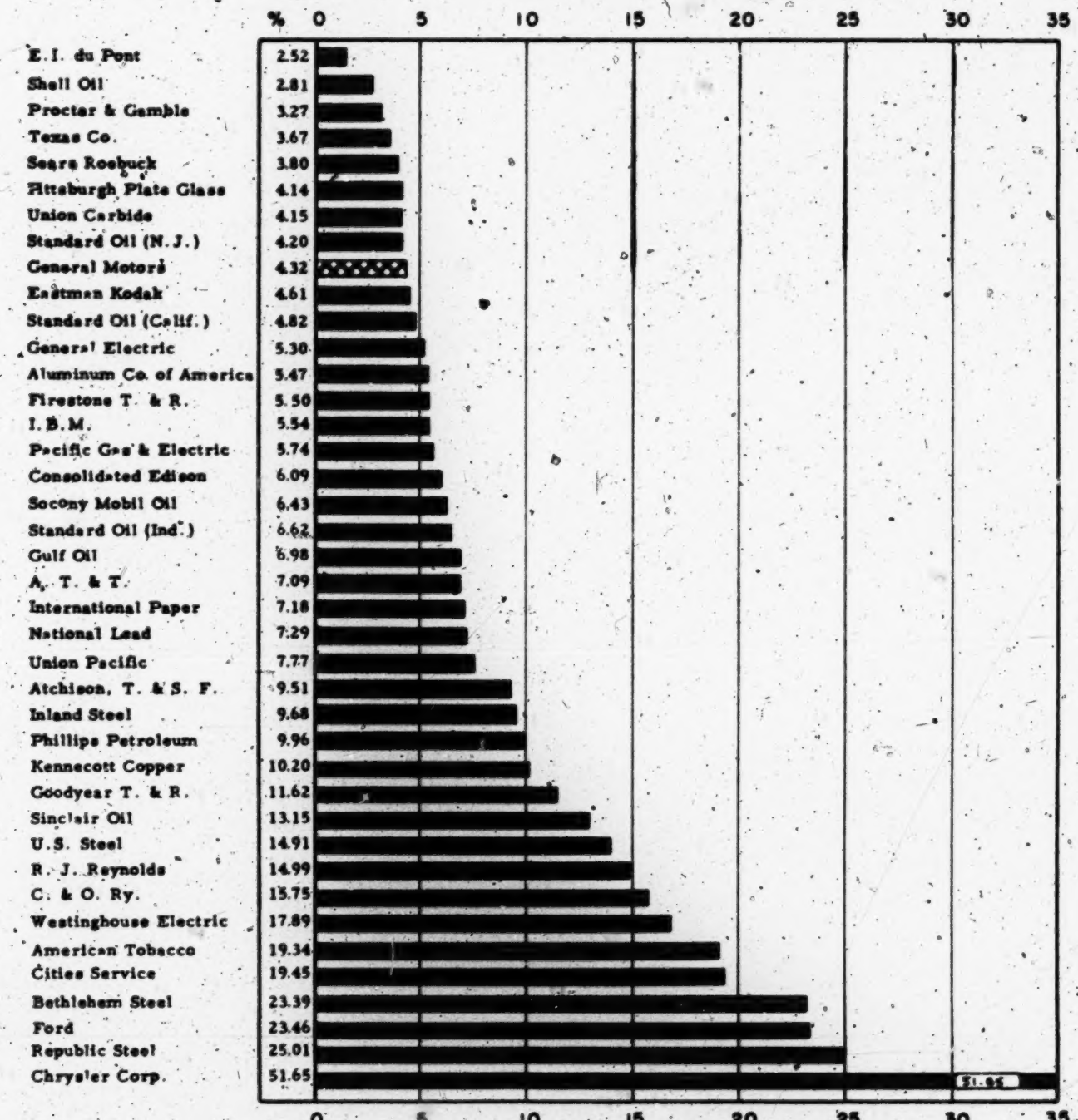
* The Hickman reports do not necessarily indicate that all of these sales were made on stock exchanges. A portion of the sales may have been made in the over-the-counter market. However, all sales known to have been made through "Special Offerings" have been excluded from this column.

Data regarding New York Stock Exchange trading volume in common stock of Limited has been compiled from the Bank & Quotation Record.

2844B

# STOCK TURNOVER DATA FOR LARGE COMPANIES; 1953–1957 AVERAGE

VOLUME OF COMMON STOCK TRADED ON NEW YORK STOCK EXCHANGE AND ON SEVEN REGIONAL SECURITIES EXCHANGES* STATED AS PERCENTAGES OF TOTAL STOCK ISSUED AND OUTSTANDING




The Regional Securities Exchanges are as follows:

Boston Stock Exchange
Cincinnati Stock Exchange
Detroit Stock Exchange
Midwest Stock Exchange
Pittsburgh Stock Exchange
Pacific Coast Stock Exchange (Including therein the trading volume on predecessor San Francisco and Los Angeles Stock Exchanges)
Philadelphia-Baltimore Stock Exchange

[fol. 3262] GOVERNMENT TRIAL EXHIBIT NO. 442

ALUMINIUM LIMITED

(1) Shares of Common Stock Outstanding at End of Year, 1950–1958

(2) Round Lot Trading Volume for Aluminium Limited Common Stock on New York Stock Exchange, 1950–1958

| Year | Shares Outstanding End of Year | Round Lot Trading on N. Y. S. E. (Number of Shares) | % Trading Volume to Stock Outstanding |
|---|---|---|---|
| | | Present Share Basis | |
| 1950 | 22,332,300 | 1,819,800 | 8.15 |
| 1951 | 24,559,734 | 2,259,600 | 9.20 |
| 1952 | 24,559,734 | 2,404,500 | 9.79 |
| 1953 | 27,041,842 | 2,419,500 | 8.95 |
| 1954 | 27,109,146 | 3,373,200 | 12.44 |
| 1955 | 29,927,070 | 3,408,300 | 11.39 |
| 1956 | 30,041,541 | 3,256,800 | 10.84 |
| 1957 | 30,168,212 | 3,060,900 | 10.15 |
| 1958 | 30,283,289 | 5,482,000 | 18.10 |

Sources: Moody's Manual for number of shares outstanding at end of year. Bank & Quotation Record for volume of trading on New York Stock Exchange. Share volume, as stated above, is in terms of present common shares of Aluminium Limited and reflects adjustment for stock-splits as follows:

2-for-1 in September 1952
3-for-1 in May 1957

With regard to the year 1958, the report made by Leon E. Hickman to the Clerk of the United States District Court, Southern District of New York, is the source of information regarding the number of shares outstanding.

ALUMINIUM LIMITED

Number Of Shares Of Common Stock Sold By Shareholders Subject To Stock Disposal Judgment And Approximate Market Value Of Such Shares, By Months, 1951 - 1958.

| Year & Month | No. of Shares Sold (Present Share Basis) | Approx. Value of Shares Sold |
|---|---|---|
| 1951 | | |
| J | 6,000 | $ 96,498 |
| F | *2,010,000 | 30,486,666 |
| M | - | - |
| A | - | - |
| M | - | - |
| J | - | - |
| J | - | - |
| A | - | - |
| S | - | - |
| O | - | - |
| N | - | - |
| D | 66,000 | 1,166,022 |
| | 2,082,000 | 31,749,186 |
| 1952 | | |
| J | 1,800 | $ 35,550 |
| F | 151,200 | 2,997,350 |
| M | 600,000 | 10,800,000 |
| A | 1,200 | 19,950 |
| M | - | - |
| J | 51,000 | 879,750 |
| J | 109,800 | 2,003,850 |
| | 55,200 | 992,441 |
| S | 12,600 | 217,350 |
| O | 30,000 | 518,760 |
| N | 21,900 | 378,695 |
| D | 36,600 | 629,813 |
| | 1,071,300 | 19,473,509 |
| 1953 | | |
| J | 74,400 | $ 1,329,900 |

| Year & Month | No. of Shares Sold (Present Share Basis) | Approx. Value of Shares Sold |
|---|---|---|
| 1954 | | |
| J | 115,500 | $1,886,461 |
| F | 75,600 | 1,310,375 |
| M | 34,800 | 653,962 |
| A | 36,000 | 686,988 |
| M | 57,300 | 1,122,106 |
| J | 77,700 | 1,647,862 |
| J | 43,200 | 993,600 |
| A | 63,300 | 1,387,346 |
| S | 37,500 | 1,024,987 |
| O | - | - |
| N | 90,000 | 2,070,000 |
| D | - | - |
| | 630,900 | 12,783,687 |
| 1955 | | |
| J | - | - |
| F | - | - |
| M | - | - |
| A | 3,000 | $ 93,624 |
| M | 3,300 | 106,425 |
| J | 8,100 | 284,172 |
| J | 535,800 | 18,530,197 |
| A | 28,500 | 999,865 |
| S | 30,000 | 1,093,740 |
| O | - | - |
| N | - | - |
| D | 3,300 | 118,249 |
| | 612,000 | 21,226,272 |
| 1956 | | |
| J | 15,600 | $ 527,795 |

| Year & Month | No. of Shares Sold | Approx. Value of Shares Sold |
|---|---|---|
| 1957 | | |
| J | 13,500 | $ 540,000 |
| F | - | - |
| M | - | - |
| A | - | - |
| M | 205,490 | 9,350,795 |
| J | 14,075 | 679,119 |
| J | - | - |
| A | - | - |
| S | 8,600 | 312,825 |
| O | - | - |
| N | - | - |
| D | 7,071 | 202,407 |
| | 248,736 | 11,085,146 |
| 1958 | | |
| J | 18,600 | $ 541,725 |
| F | - | - |
| M | - | - |
| A | - | - |
| M | 300,000 | 8,100,000 |
| J | 1,000 | 26,625 |
| J | 1,000 | 29,625 |
| A | 1,000 | 28,875 |
| S | 1,500 | 48,187 |
| O | 252,256 | 8,419,044 |
| N | 800 | 25,600 |
| D | 1,200 | 39,600 |
| | 577,356 | 16,717,556 |
| 7-Year Total | 6,638,295 | 154,191,908 |

GOVERNMENT TRIAL EXHIBIT NO. 446

ALUMINIUM LIMITED

1950 - 1958 BY MONTHS 1/

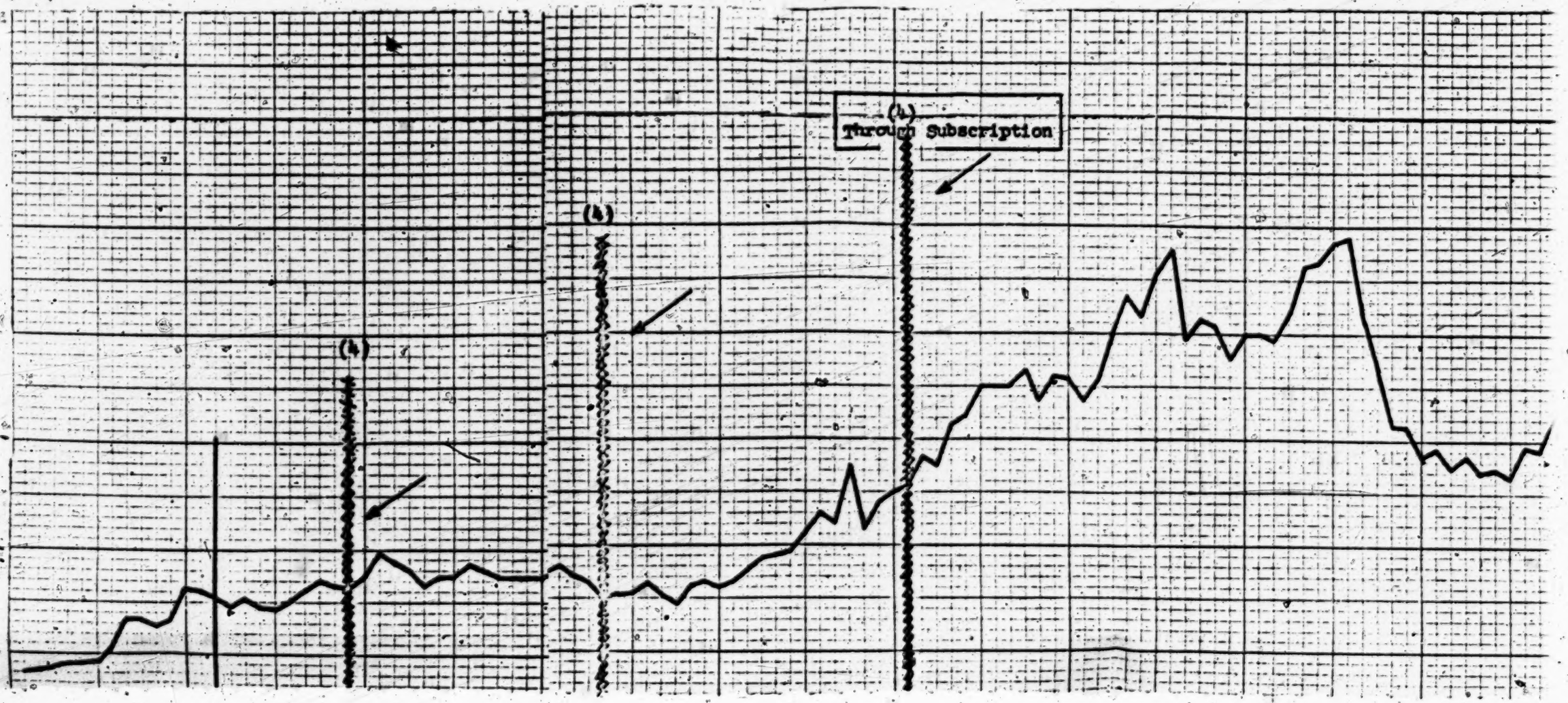
(1) Closing Prices For Common Stock On New York Stock Exchange;

(2) Common Share Trading Volume On New York Stock Exchange,

(3) Number Of Shares Of Common Stock Sold By Shareholders Subject To Stock Disposal Judgment,

(4) Number Of Shares Of New Common Stock Offered By Aluminium Limited Through Subscription Rights

PER



[fol. 3264]

GOVERNMENT TRIAL EXHIBIT NO. 444

COMMON STOCK OF ALUMINIUM LIMITED

Round Lot Trading Volume, by Months, 1950–1958, on New York Stock Exchange

(Trading Volume Is Shown on Present Share Basis Which Gives Effect to the Following Stock Splits: 2-for-1 in September 1952 and 3-for-1 in May 1957.)

| Month | 1950 | 1951 | 1952 | 1953 | 1954 | 1955 | 1956 | 1957 | 1958 |
|---|---|---|---|---|---|---|---|---|---|
| Jan. | 63,600 | 217,800 | 397,200 | 174,600 | 289,200 | 361,500 | 189,300 | 254,400 | 235,000 |
| Feb. | 82,200 | 208,800 | 221,400 | 121,800 | 253,800 | 322,200 | 244,800 | 211,800 | 193,000 |
| Mar. | 69,000 | 228,000 | 156,600 | 126,900 | 318,900 | 387,600 | 381,900 | 165,300 | 351,900 |
| Apr. | 88,200 | 169,800 | 255,000 | 322,500 | 304,200 | 261,300 | 383,100 | 222,400 | 370,300 |
| May | 72,600 | 127,800 | 159,000 | 292,200 | 213,900 | 254,100 | 342,900 | 201,400 | 277,000 |
| June | 171,600 | 95,400 | 154,200 | 241,500 | 357,000 | 271,800 | 300,600 | 211,500 | 307,500 |
| July | 172,200 | 123,000 | 339,000 | 207,600 | 318,300 | 216,000 | 312,600 | 211,600 | 384,100 |
| Aug. | 280,200 | 186,600 | 129,600 | 185,400 | 270,900 | 227,700 | 183,600 | 274,200 | 474,200 |
| Sept. | 209,400 | 234,000 | 202,200 | 147,900 | 180,600 | 452,400 | 210,600 | 228,600 | 758,200 |
| Oct. | 217,200 | 293,400 | 134,400 | 280,200 | 313,800 | 258,000 | 243,300 | 401,100 | 962,200 |
| Nov. | 153,000 | 165,000 | 115,500 | 118,800 | 340,200 | 193,200 | 255,900 | 337,200 | 474,300 |
| Dec. | 240,600 | 210,000 | 146,400 | 199,200 | 213,300 | 232,500 | 199,200 | 341,400 | 694,300 |

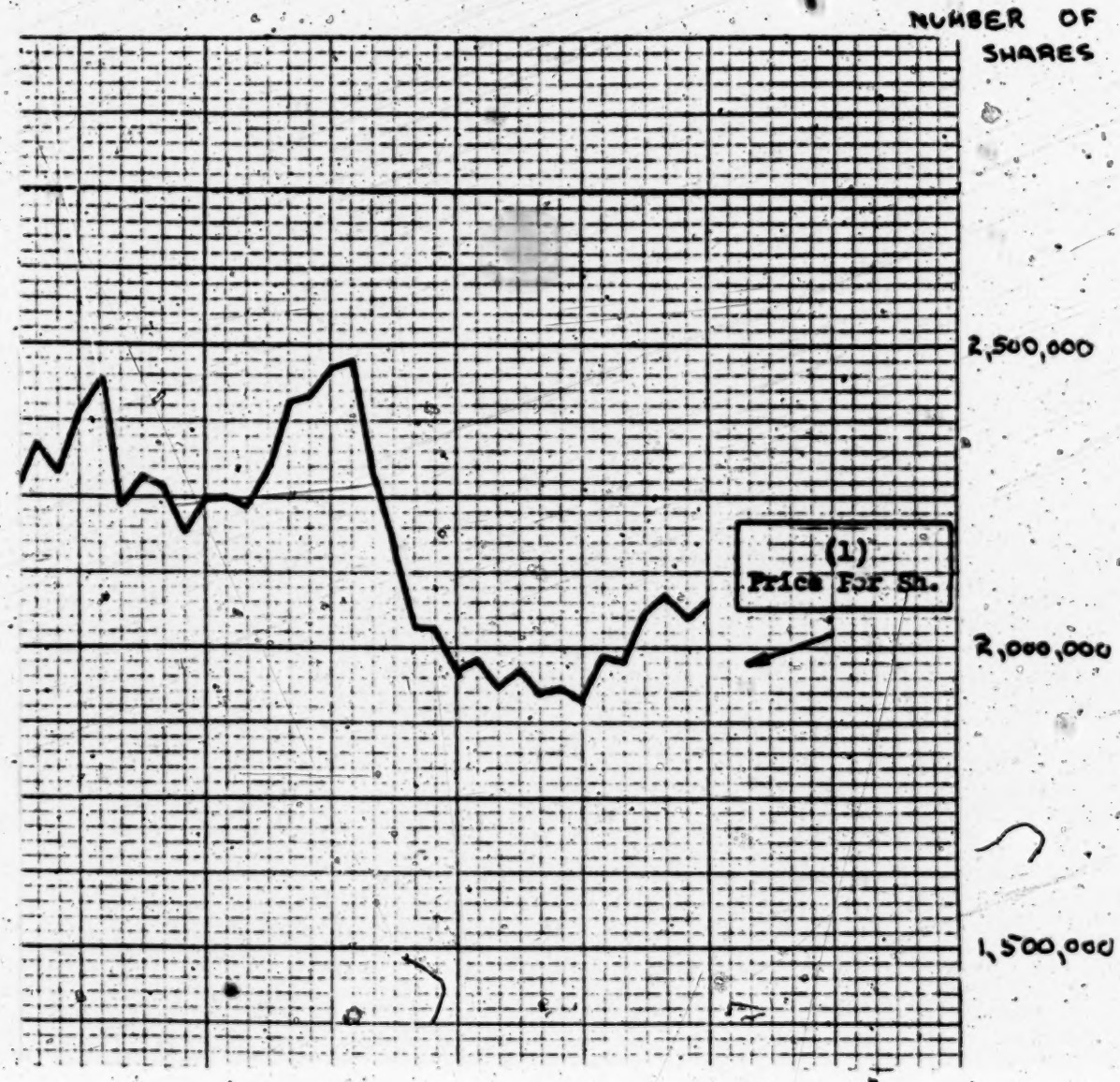
Source: Bank & Quotation Record.

Exchange,

ıange,

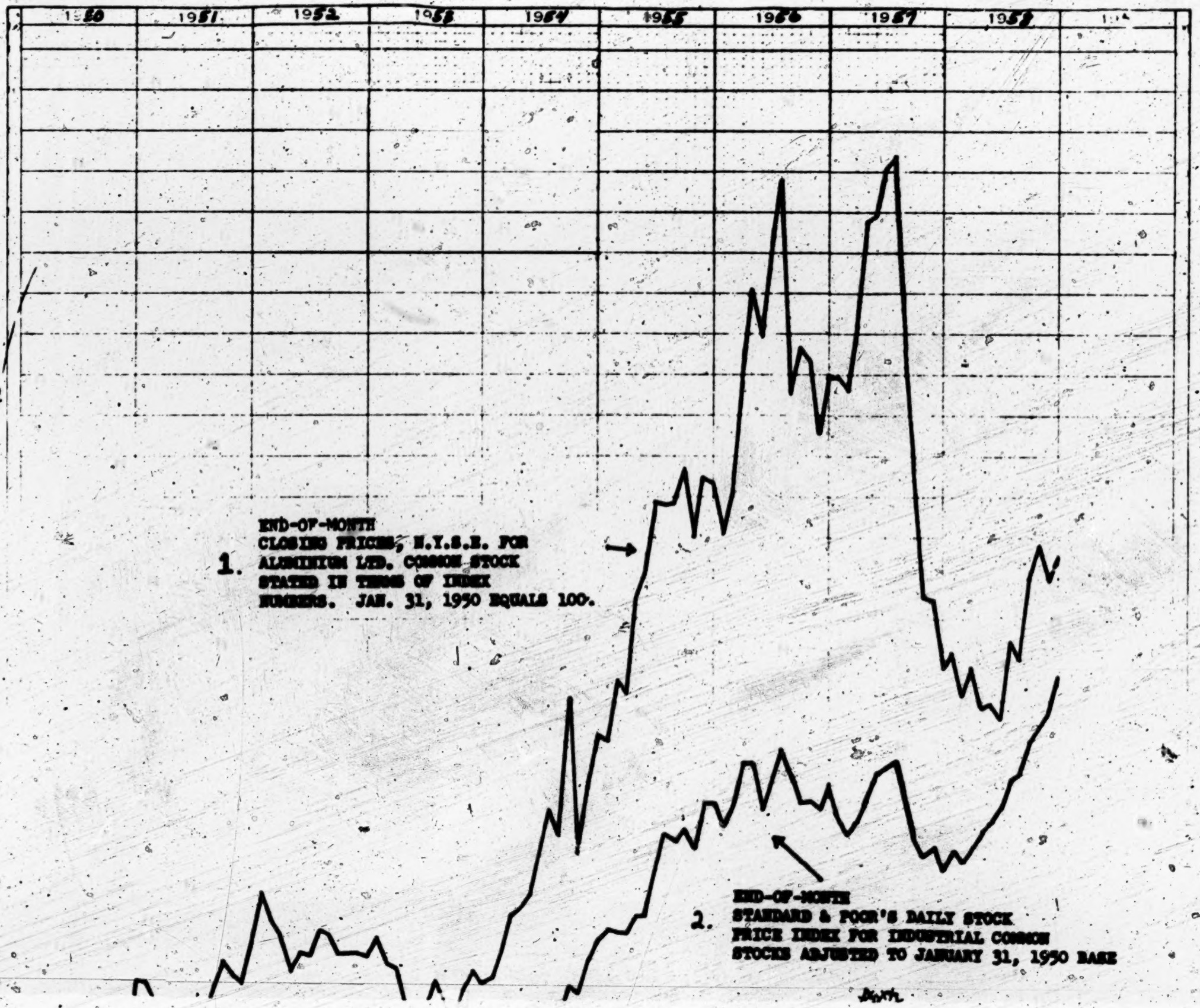
lers Subject

luminium



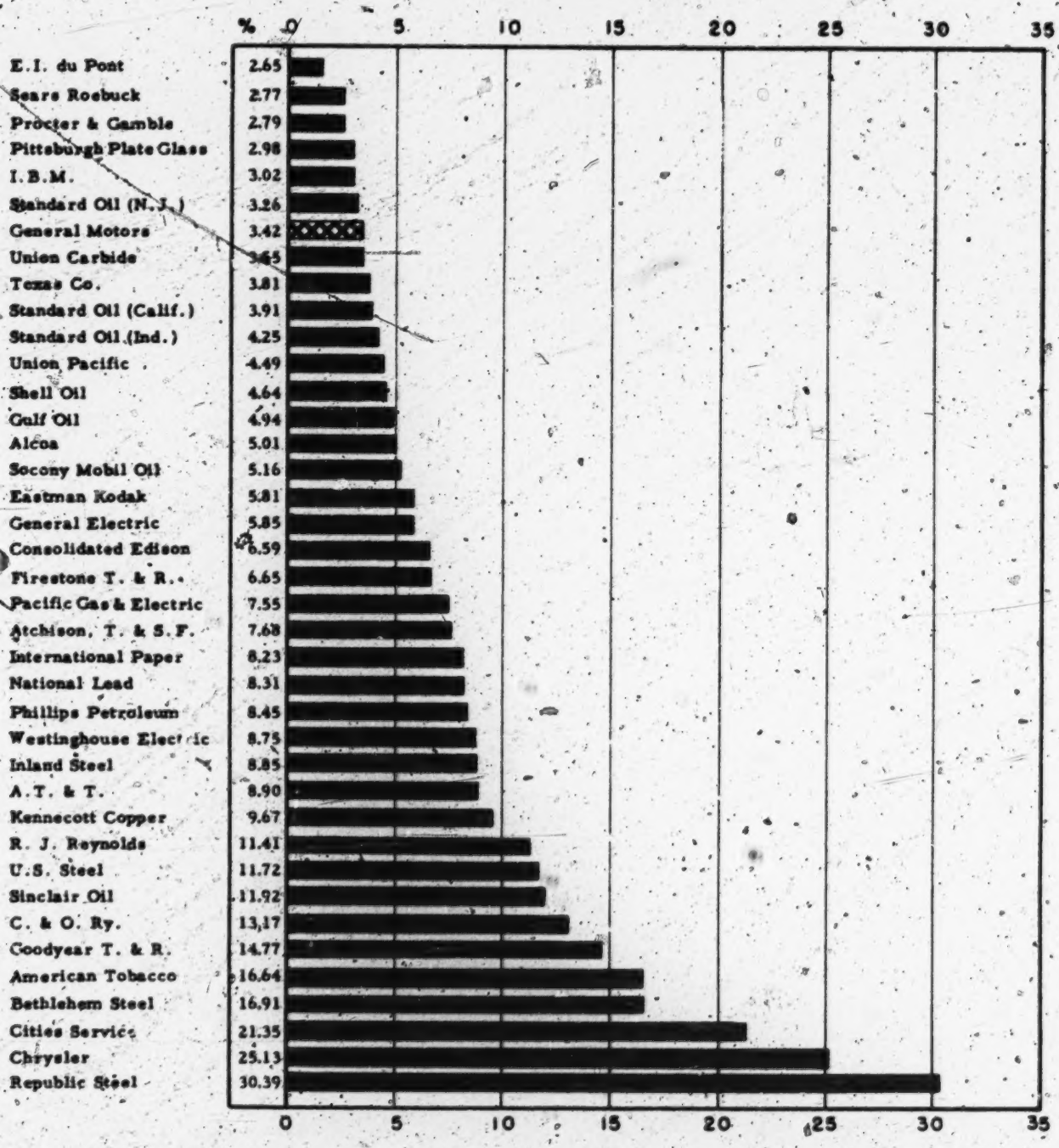
GOVERNMENT TRIAL EXHIBIT No. 447





# STOCK TURNOVER DATA FOR LARGE COMPANIES — 1953

VOLUME OF COMMON STOCK TRADED ON NEW YORK STOCK EXCHANGE AND ON SEVEN REGIONAL SECURITIES EXCHANGES* STATED AS PERCENTAGE OF TOTAL STOCK ISSUED AND OUTSTANDING




*The Regional Securities Exchanges are as follows:

Boston Stock Exchange
Cincinnati Stock Exchange
Detroit Stock Exchange
Midwest Stock Exchange
Pittsburgh Stock Exchange
Pacific Coast Stock Exchange (Including therein the trading volume on predecessor San Francisco and Los Angeles Stock Exchanges.)
Philadelphia-Baltimore Stock Exchange

Note: Where stock splits have occurred in this year, the trading volume has been adjusted to a basis comparable with the type of stock issued and outstanding at the end of the year.

[fol. 3276]

# THE WALL STREET JOURNAL

DOW, JONES & COMPANY, Inc
PUBLISHERS

44 BROAD STREET
NEW YORK 4, N.Y.

You will be interested in seeing the attached, clipped from the Dow, Jones news ticker which serves Corporations, Banks, Investment Dealers, Brokers, Newspapers and Press Associations in 300 Cities in the United States and Canada. Practically all of these articles also appear in The Wall Street Journal (identified readership 223,641.) In addition, hundreds of newspapers and magazines with circulations of many millions reprint directly from our ticker and from The Wall Street Journal.

Sincerely yours,

Dick Meyer

EQUITABLE GAS CO

PUBLIC OFFERING OF TWO MILLION SHARES OF EQUITABLE GAS CO COMMON STOCK IS BEING MADE TODAY

THE STOCK IS PRICED AT 24 DLS 25C A SHARE AND IS BEING SOLD FOR THE ACCOUNT OF PHILADELPHIA CO IN COMPLIANCE WITH A DIVESTMENT ORDER OF THE S E C UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

KIDDER PEABODY & CO MERRILL LYNCH PIERCE FENNER & BEANE AND WHITE WELD & CO ARE JOINT MANAGERS OF A GROUP OF INVESTMENT BANKING FIRMS WHICH IS MAKING THE OFFERING

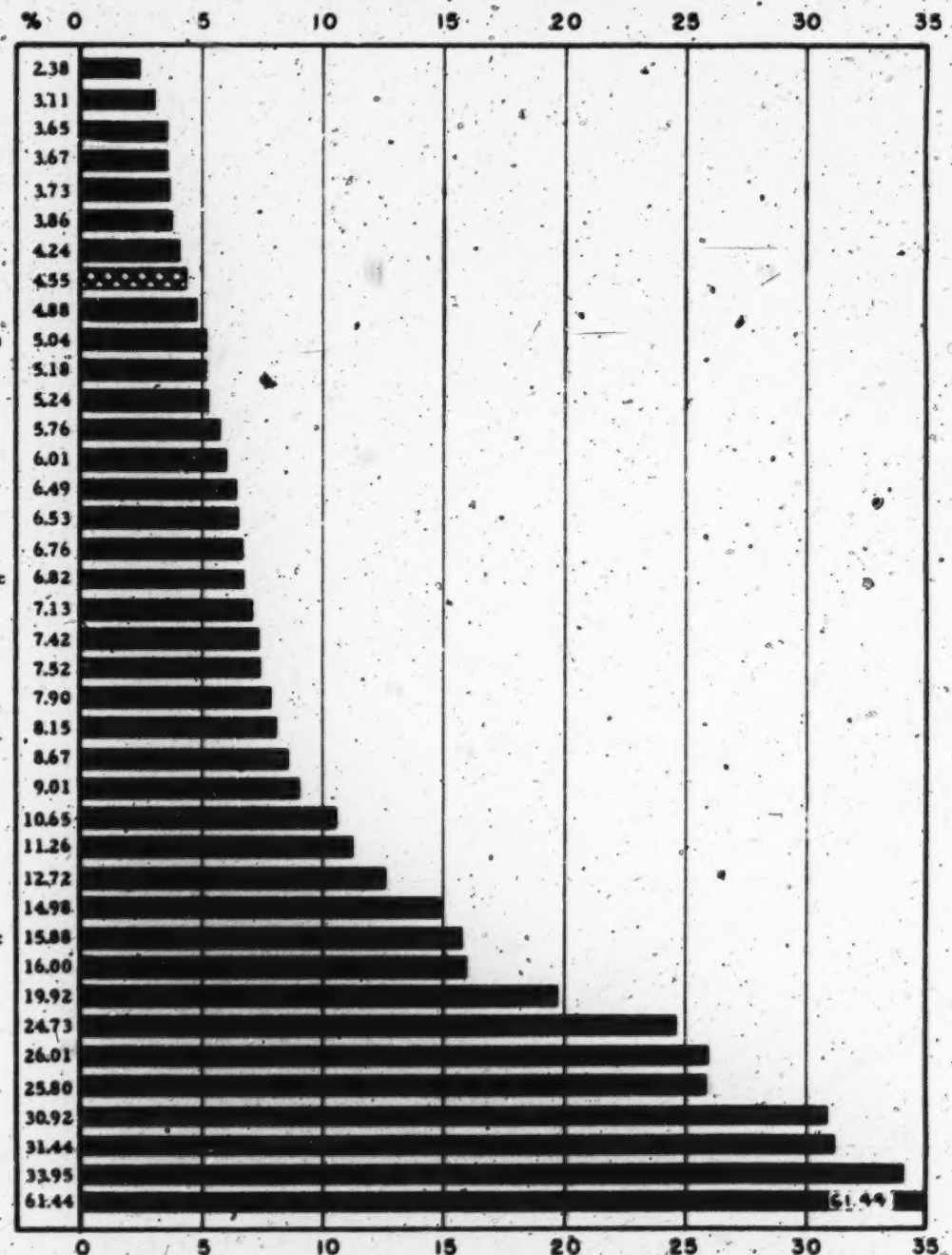
Norman

It selects By the nature of its news, The Wall Street Journal SELECTS for you, from the circulations of all newspapers, THOSE MEN in industry who CHOOSE INVESTMENT HOUSES to bring out new issues. ALSO THOSE MEN who regularly BUY BONDS and STOCKS for their own large portfolios, or for the portfolios of BANKS, INSURANCE COMPANIES, TRUST ACCOUNTS, and INSTITUTIONS. So, IRRESPECTIVE of whatever other paper investment houses use, they MAKE SURE TO COVER THEIR MARKET by using The Wall Street Journal. The score of issues advertised the past year follows:

| | | |
|---|---|---|
| The Wall Street Journal | 721 | issue advertisements |
| The New York Times | 368 | " " |
| New York Herald Tribune | 281 | " " |

# STOCK TURNOVER DATA FOR LARGE COMPANIES — 1954

VOLUME OF COMMON STOCK TRADED ON NEW YORK STOCK EXCHANGE AND ON SEVEN REGIONAL SECURITIES EXCHANGES* STATED AS PERCENTAGE OF TOTAL STOCK ISSUED AND OUTSTANDING



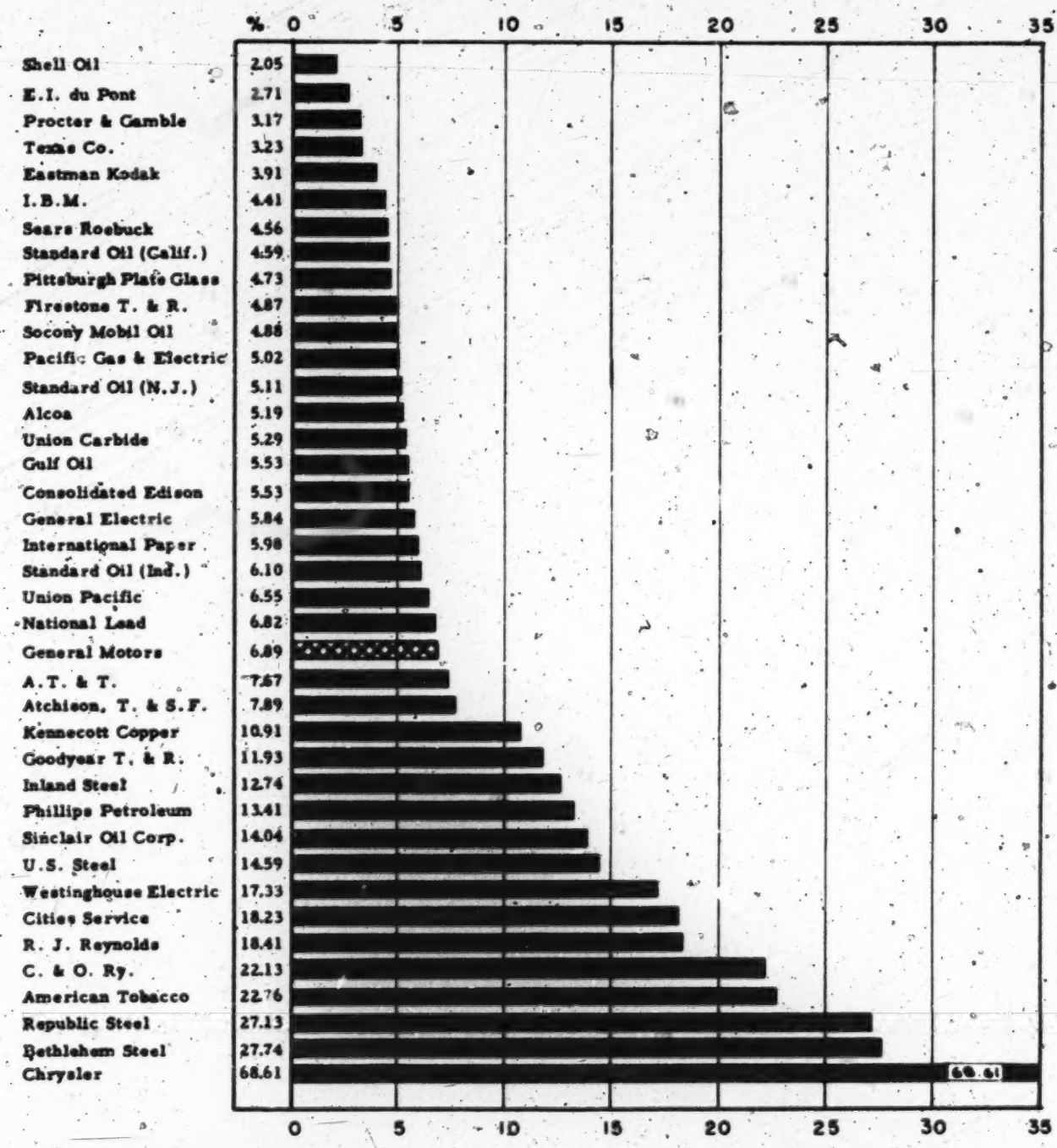

*The Regional Securities Exchanges are as follows:

Boston Stock Exchange
Cincinnati Stock Exchange
Detroit Stock Exchange
Midwest Stock Exchange
Pittsburgh Stock Exchange
Pacific Coast Stock Exchange (Including therein the trading volume on predecessor San Francisco and Los Angeles Stock Exchanges.)
Philadelphia-Baltimore Stock Exchange

Note: Where stock splits have occurred in this year, the trading volume has been adjusted to a basis comparable with the type of stock issued and outstanding at the end of the year.

# STOCK TURNOVER DATA FOR LARGE COMPANIES–1955

VOLUME OF COMMON STOCK TRADED ON NEW YORK STOCK EXCHANGE AND ON SEVEN REGIONAL SECURITIES EXCHANGES* STATED AS PERCENTAGE OF TOTAL STOCK ISSUED AND OUTSTANDING




*The Regional Securities Exchanges are as follows:

Boston Stock Exchange
Cincinnati Stock Exchange
Detroit Stock Exchange
Midwest Stock Exchange
Pittsburgh Stock Exchange
Pacific Coast Stock Exchange (including therein the trading volume on predecessor San Francisco and Los Angeles Stock Exchanges.)
Philadelphia-Baltimore Stock Exchange

Note: Where stock splits have occurred in this year, the trading volume has been adjusted to a basis comparable with the type of stock issued and outstanding at the end of the year.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1953 | | | 1956 | | | |
| J | 74,400 | $ 1,329,900 | J | 15,600 | $ 527,795 | |
| F | 24,300 | 410,062 | F | 66,228 | 2,348,312 | |
| M | 151,800 | 2,568,675 | M | 420,039 | 16,910,451 | |
| A | 8,700 | 130,500 | A | 140,700 | 5,686,672 | |
| M | 71,700 | 1,087,474 | M | 750 | 31,250 | |
| J | 48,300 | 732,566 | J | 23,400 | 1,060,792 | |
| J | 51,000 | 826,608 | J | 38,472 | 1,840,231 | |
| A | 30,000 | 457,500 | A | 7,800 | 307,453 | |
| S | 41,400 | 603,736 | S | 32,814 | 1,350,854 | |
| O | 135,600 | 2,158,345 | O | - | - | |
| N | 12,000 | 198,504 | N | - | - | |
| D | 10,500 | 168,872 | D | 10,500 | 420,000 | |
| | 659,700 | 10,672,742 | | 755,303 | 30,483,810 | |

7-Year Total 6,638,295 154,191,908

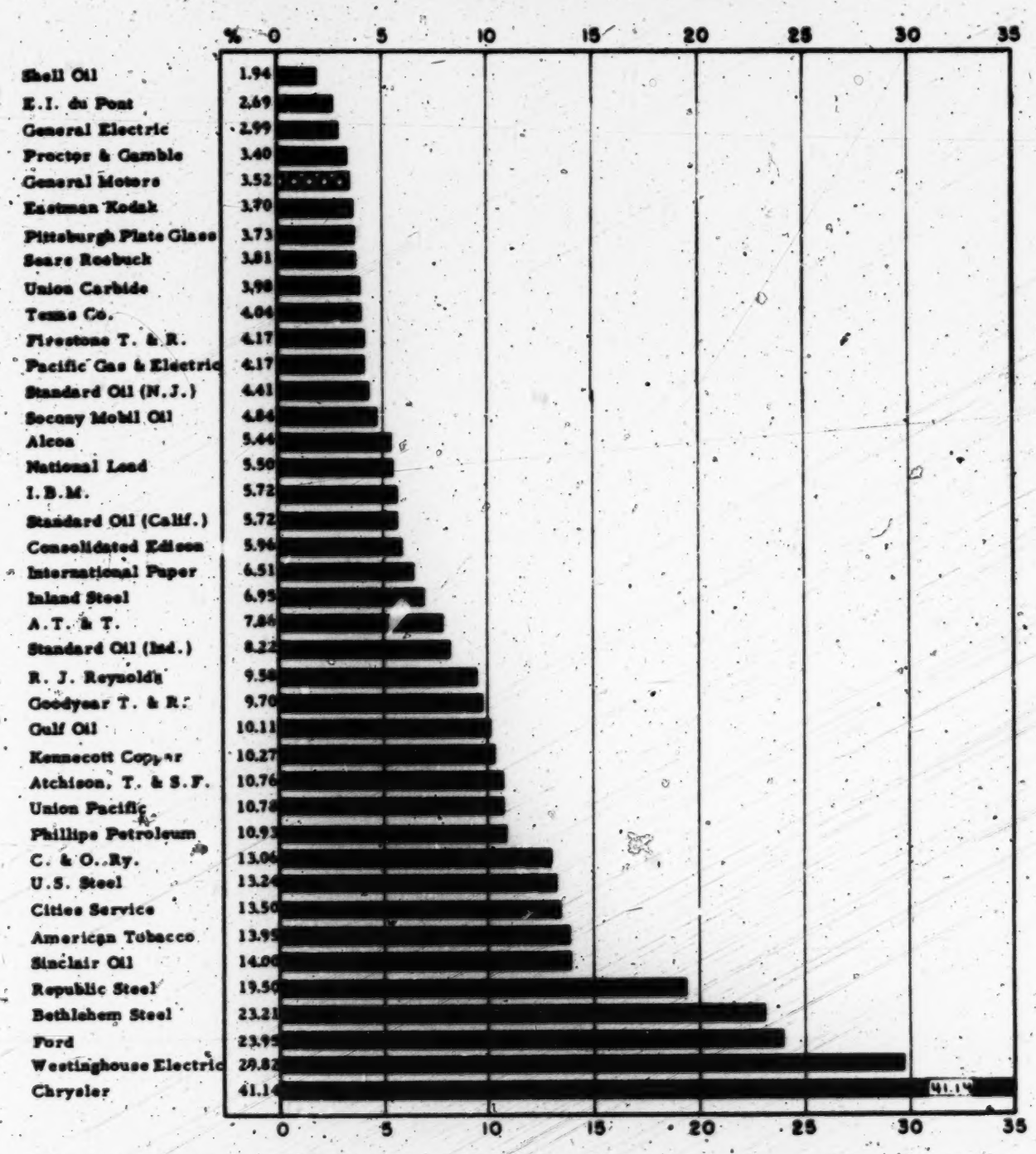
* Includes the equivalent of 300,000 present shares sold by "Restricted Stockholders" as that term is used in the Stock Disposal Judgment. All other sales in the above compilation were made by "Selling Shareholders".

SOURCES: Data regarding the number of shares sold has been compiled from reports submitted by Leon E. Hickman, Vice-President & General Counsel of the Aluminum Company of America, to the Clerk of the United States District Court For The Southern District Of New York. The market value data has been estimated on the basis of the closing price of common stock of Aluminium Limited on the New York Stock Exchange for the month in which the sale occurred. However, for such blocks of stock as could be identified as part of a secondary distribution, the announced price per share for such offering was the basis for the dollar computation.

Note: The number of shares shown above is in terms of present common stock of Limited and gives effect to stock-splits as follows:
2-for-1 in September 1952
3-for 1 in May 1957

## STOCK TURNOVER DATA FOR LARGE COMPANIES—1956

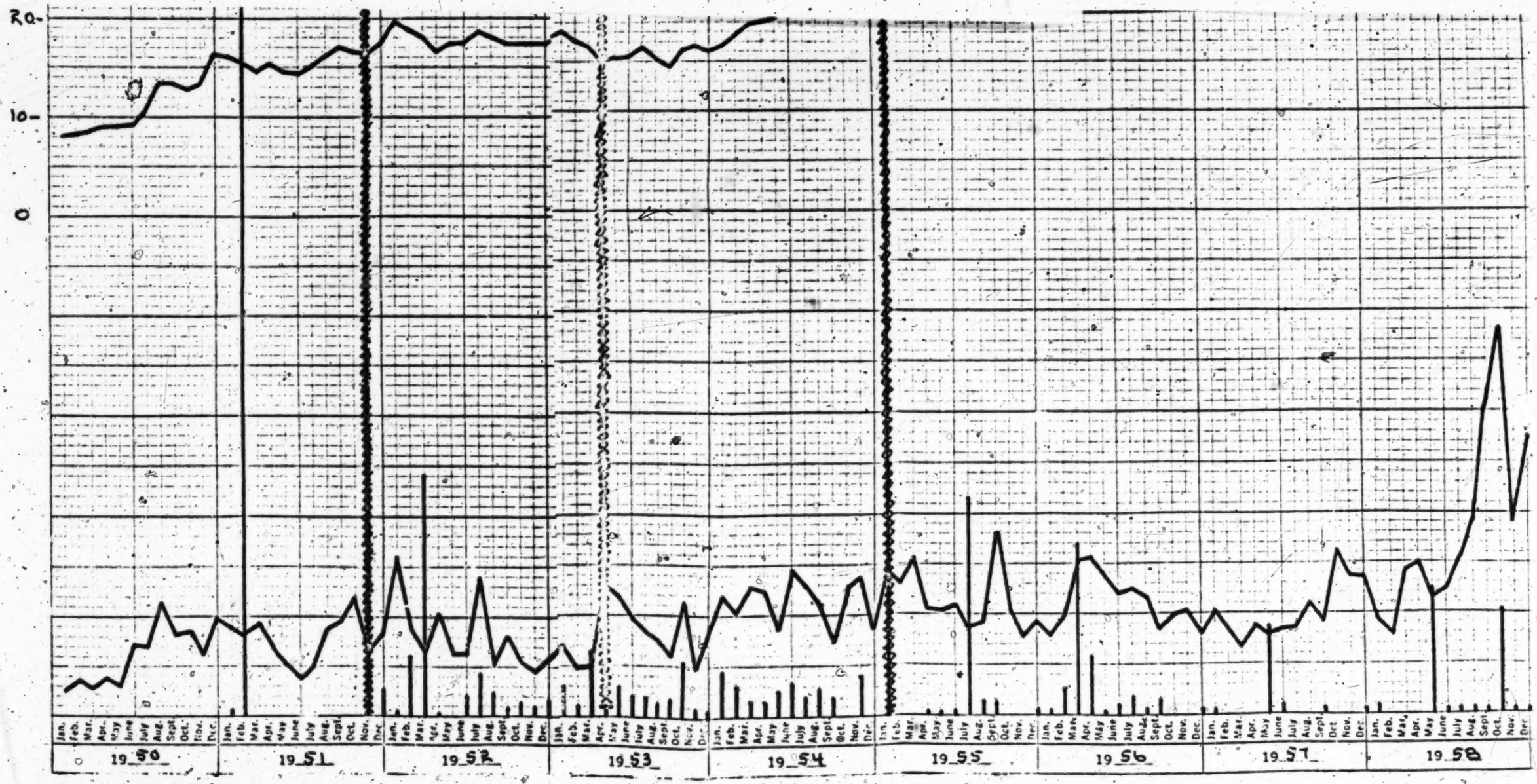
VOLUME OF COMMON STOCK TRADED ON NEW YORK STOCK EXCHANGE AND ON SEVEN REGIONAL SECURITIES EXCHANGES* STATED AS PERCENTAGE OF TOTAL STOCK ISSUED AND OUTSTANDING




* The Regional Securities Exchanges are as follows:

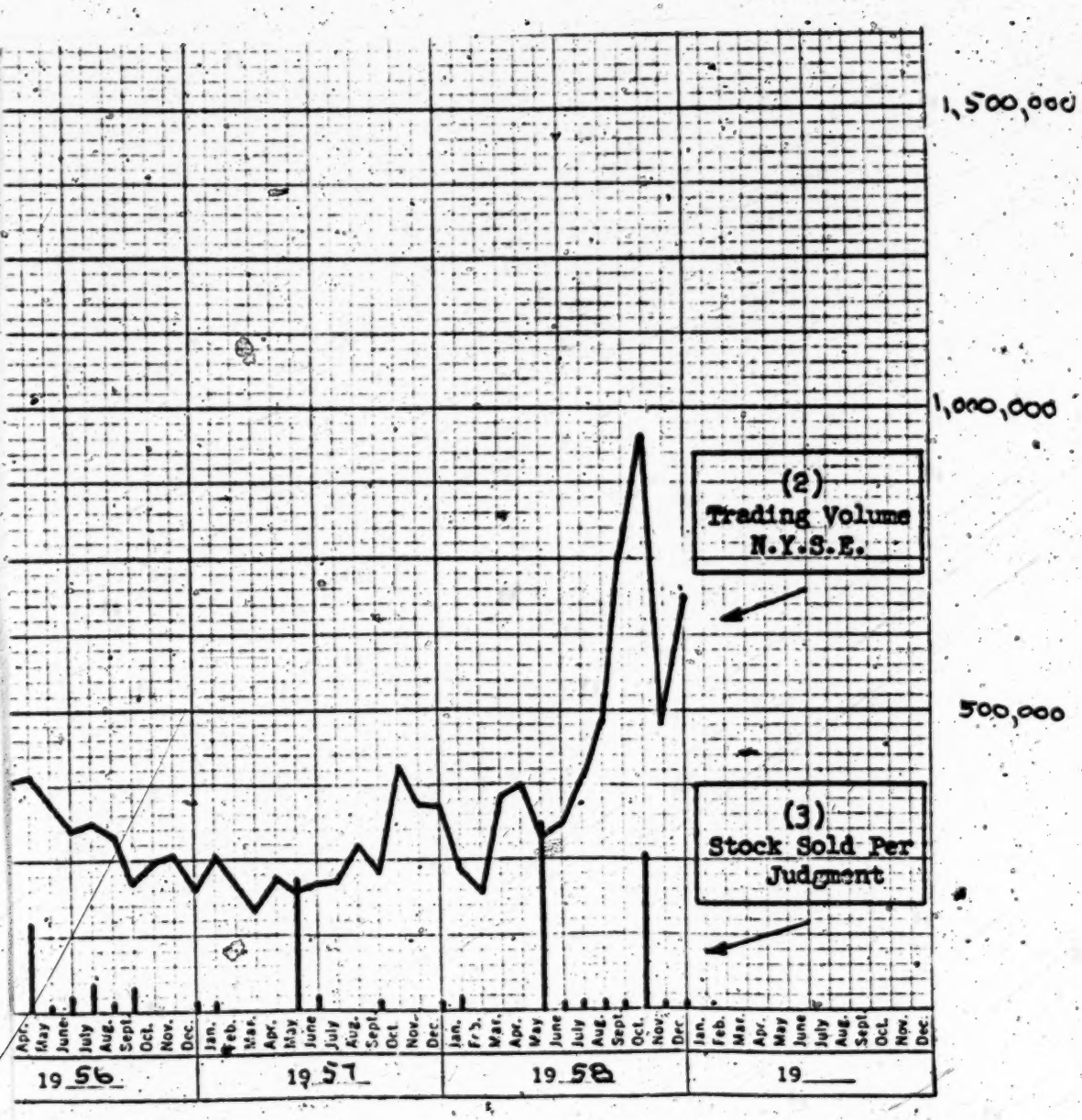
Boston Stock Exchange
Cincinnati Stock Exchange
Detroit Stock Exchange
Midwest Stock Exchange
Pittsburgh Stock Exchange
Pacific Coast Stock Exchange (Including therein the trading volume on predecessor San Francisco and Los Angeles Stock Exchanges.)
Philadelphia-Baltimore Stock Exchange

Note: Where stock splits have occurred in this year, the trading volume has been adjusted to a basis comparable with the type of stock issued and outstanding at the end of the year.

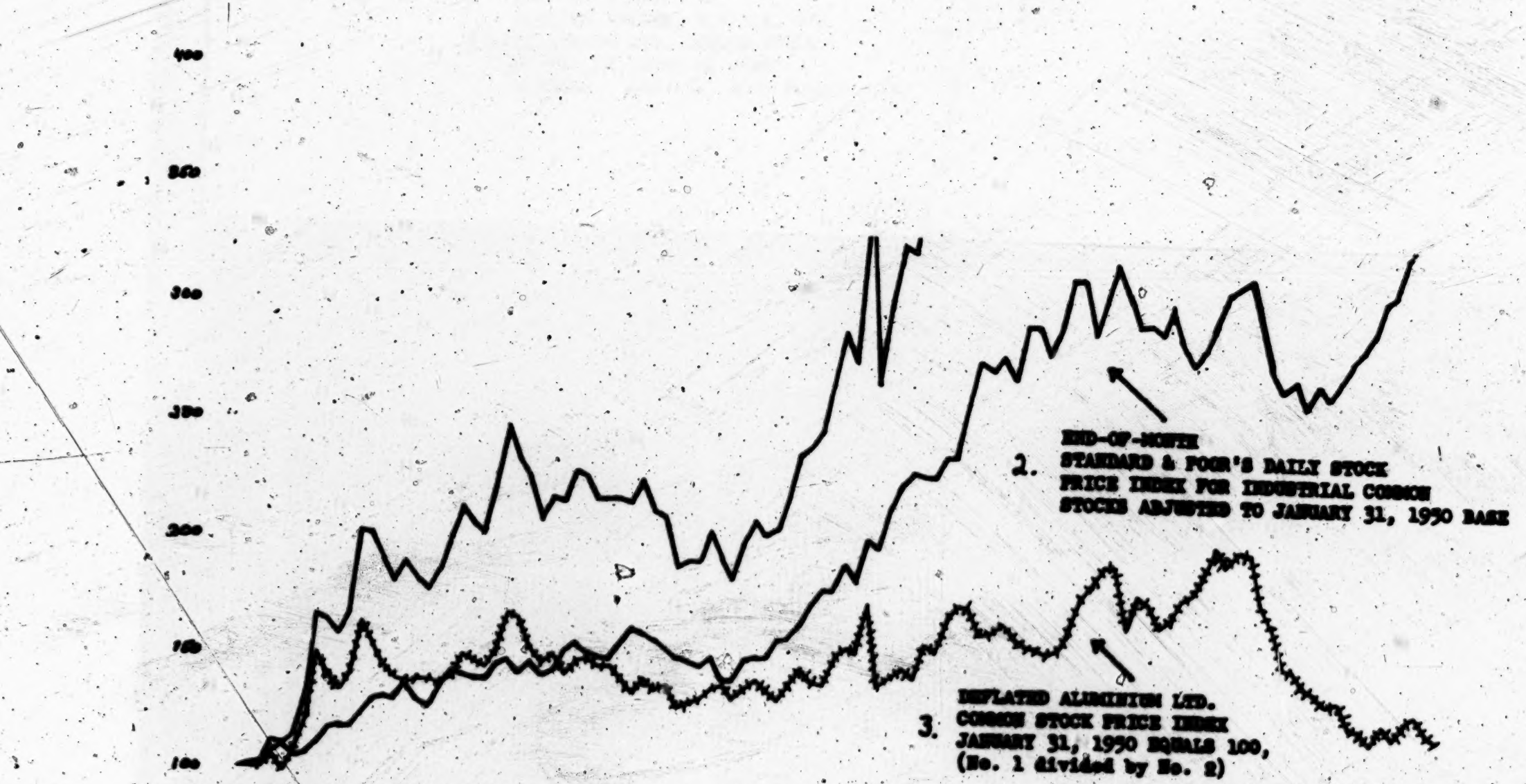



1/ Closing prices on N.Y.S.E. for end of month. Stock sold by shareholders for period of 1951 - 1958.

(NOTE: Data with regard to the number of shares and market prices per share are stated in terms of present common stock of Aluminium Limited and g to a 2-For-1 stock split in September 1952 and a 3-For-1 split in May 1957.)

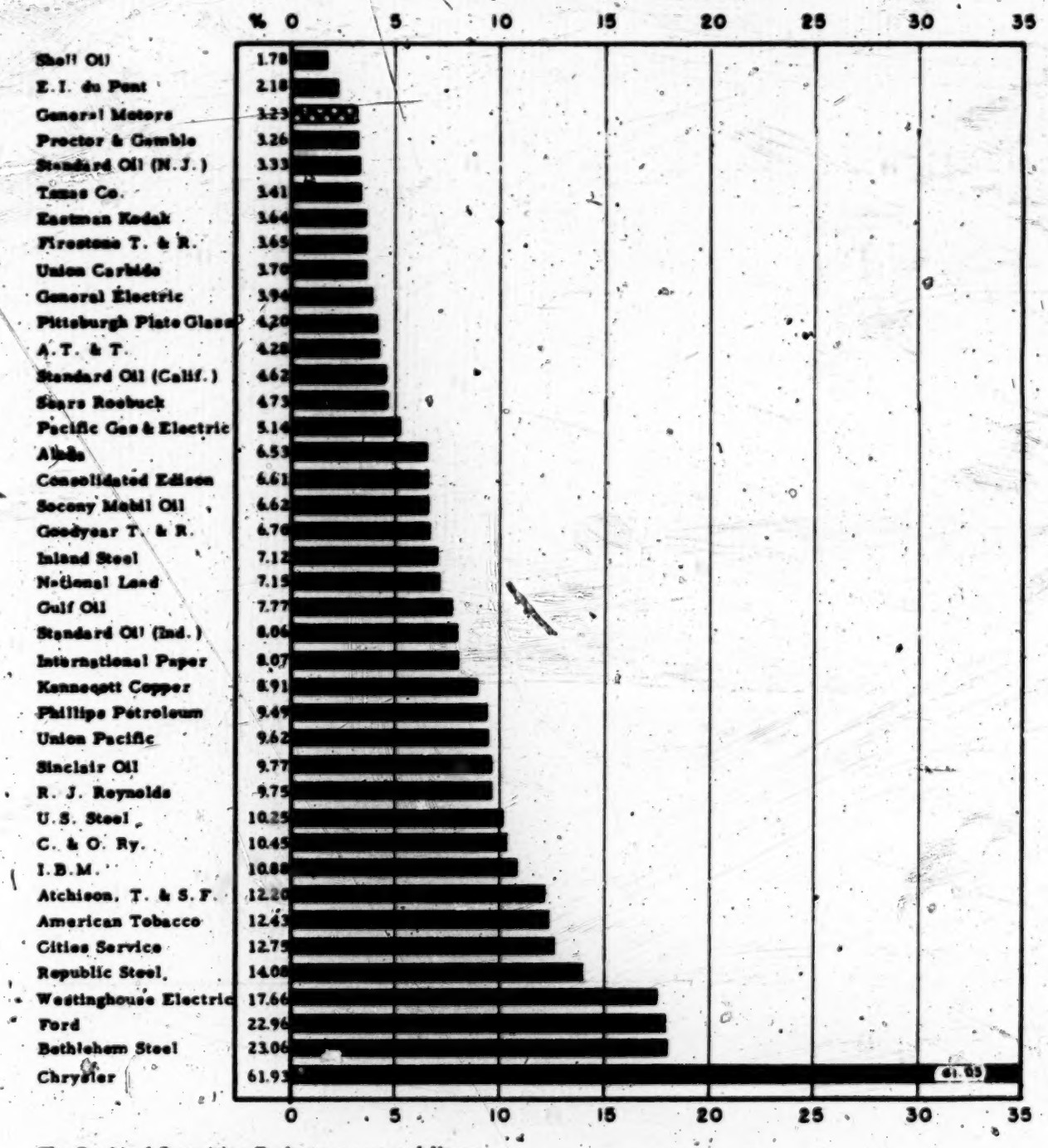



present common stock of Aluminium Limited and give effect




## STOCK TURNOVER DATA FOR LARGE COMPANIES — 1957

VOLUME OF COMMON STOCK TRADED ON NEW YORK STOCK EXCHANGE AND ON SEVEN REGIONAL SECURITIES EXCHANGES* STATED AS PERCENTAGES OF TOTAL STOCK ISSUED AND OUTSTANDING




The Regional Securities Exchanges are as follows:

Boston Stock Exchange
Cincinnati Stock Exchange
Detroit Stock Exchange
Midwest Stock Exchange
Pacific Coast Stock Exchange
Philadelphia-Baltimore Stock Exchange
Pittsburgh Stock Exchange

GOVERNMENT TRIAL EXHIBIT No. 519

GOVERNMENT TRIAL EXHIBIT No. 519

List of Securities Issued With an Aggregate Value in Excess of $50,000,000 and Secondary Offerings of Securities having An Aggregate Value In Excess of $25,000,000 by the Firm of Merrill, Lynch, Pierce, Fenner & Smith, 77 Pine Street, New York, N. Y. from January 1, 1950 to February 25, 1959.

| Date | Company | Offering | Total Offering Value | Manager | Actual Syndicate Head |
|---|---|---|---|---|---|
| 3-27-50 | Equitable Gas | Secondary—2,000,000 Shares Common Stock @ $24.25 | $ 48,500,000 | Kidder Peabody—MLPF&S—White Weld | Kidder Peabody |
| 3-20-52 | Schearing | Secondary—1,760,000 Shares Common Stock @ $17.50 | 30,800,000 | MLPF&S—Kidder Peabody-Drexel | MLPF&S |
| 1- 9-53 | Sinclair | $101,758,900 Convertible Subord. Debentures due 1983 @ 100%, offered to stockholders on rights | 101,758,000 | Smith Barney—MLPF&S | Smith Barney |
| 10-26-54 | Cortland Equipment Lessors | $50,000,000 Serial Debentures due 1955-64 and $25 million Sinking Fund Debentures due 1969 @ 100% | 75,000,000 | MLPF&S | MLPF&S |
| 1-18-56 | Ford Motor | 10,200,000 Shares Common Stock @ $64.50 | 657,900,000 | Blyth-First Boston-Goldman Sachs-Kuhn Loeb-Lehman-MLPF&S-White Weld | Blyth |
| 3-21-56 | Scott Paper | $98,685,100 Convertible Debentures due 1971 @ 100%, offered to stockholders on rights | 98,685,100 | Drexel-Smith Barney-MLPF&S | Drexel |
| 7-10-56 | Sperry Rand | 2,570,846 Shares Common Stock @ $20.50, offered to stockholders on rights | 52,702,343 | Lehman—MLPF&S | MLPF&S |
| 11-15-56 | Sinclair | $167,247,600 Convertible Debentures due 1986 @ 100%, offered to stockholders on rights | 167,247,600 | Smith Barney—MLPF&S | Smith Barney |
| 9-11-57 | Sperry Rand | $110,000,000 Sinking Fund Debentures with warrants @ 100% | 110,000,000 | Lehman—MLPF&S | MLPF&S |
| 4-10-58 | Douglas Aircraft | $60,000,000 5% Sinking Fund Debentures @ 100% | 60,000,000 | MLPF&S—Kuhn Loeb | MLPF&S |
| 2- 4-59 | Universal Oil | 2,900,000 Shares Common Stock @ $25 | 72,500,000 | Lehman-Smith Barney-MLPF&S | Lehman |

[fol. 3277]

CLASS OF SERVICE

This is a full-rate Telegram or Cable-gram unless its de-ferred character is in-dicated by a suitable symbol above or pre-ceding the address.

# WESTERN UNION

1201

W. P. MARSHALL, PRESIDENT

SYMBOLS

DL = Day Letter
NL = Night Letter
LC = Deferred Cable
NLT = Cable Night Letter
Ship Radiogram

The time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination

GA RBF WU ZO17 DL PD 17 EXTRA=CD NEWYORK NY MAR 29 1937=

MERRILL LYNCH PIERCE FENNER & BEANE=

=PLEASE ADVISE KIDDER PEABODY & CO 17 WALL STREET NEW YORK CITY IMMEDIATELY BY TELEGRAM COLLECT YOUR UNSOLD BALANCE EQUITABLE GAS COMMON STOCK=

=KIDDER PEABODY & CO

MERRILL LYNCH PIERCE FENNER & BEANE

WHITE WELD & CO AS RE-PRESENTATIVES BY KIDDER PEABODY & CO=

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING THIS SERVICE

[fol. 3278]

DOMESTIC SERVICE
Check the class of service desired; otherwise this message will be sent as a full rate telegram
FULL RATE TELEGRAM | SERIAL
DAY LETTER | NIGHT LETTER

# WESTERN UNION

1200

JOSEPH L. EGAN, PRESIDENT

INTERNATIONAL SERVICE
Check the class of service desired; otherwise this message will be sent at the full rate
FULL RATE | DEFERRED
CODE | NIGHT LETTER

| NO. WDS.-CL. OF SVC. | PD. OR COLL. | CASH NO. | CHARGE TO THE ACCOUNT OF | TIME FILED |
|---|---|---|---|---|
| | | | MLPF&B (SYNDICATE DEPT.) | |

*Send the following message, subject to the terms on back hereof, which are hereby agreed to*

KIDDER, PEABODY & CO.
17 WALL STREET
NEW YORK, N.Y.

MARCH 29, 1950

WE HAVE NO UNSOLD EQUITABLE GAS COMPANY COMMON STOCK.

MERRILL LYNCH, PIERCE, FENNER & BEANE

MAR 29 1950

87

[fol. 3279]

Indiana University
School of Business

April 15, 1952.
Bloomington, Indiana

H. C. Sauvain
Professor of Finance

File Schering Corp

Mr. G. K. Martin,
Merrill Lynch, Pierce, Fenner & Beane,
17 Pine Street,
New York, New York.

Dear Mr. Martin:

It was very kind of you to send me the documents on the Schering common stock.

I am very much interested in the problem of common stock valuation and your firm's bid for the Schering stock seemed to be an outstanding example of how someone solved that problem in a particular instance. What I would like to find out is, by what process of reasoning you people arrived at the bid that you made. I realize that this is something that you cannot discuss freely but perhaps you can give me some kind of indication of the general approach and principles used.

For example, could you indicate whether you based your valuation principally on estimated earnings per share or on estimated dividends per share or whether you used a combination of those two bases for valuation? How far into the future did you attempt to project your estimates of earnings or dividends per share? If you capitalized either estimated earnings or dividends what considerations influenced you in arriving at a capitalizaton rate?

If it isn't appropriate for you to discuss these questions, just take this as a letter of thanks and forget about it. If you can throw any light on the subject, I shall appreciate it. And I promise to keep in confidence anything which is so labeled.

Very truly yours, H. C. Sauvain, Chairman, Department of Finance.

jl

[fol. 3280]

April 18, 1952.

Dr. H. C. Sauvain,
School of Business,
Indiana University,
Bloomington, Indiana.

Dear Dr. Sauvain:

As a practical matter, I do not believe that our approach to the valuation of Schering Corporation common stock differed in any material respect from that of other competing underwriting groups. Furthermore, since we had an underwriting group of approximately eighty members, I doubt whether our procedure or reasoning is at this time very confidential. However, before going into detail on how we arrived at our price, I think that it is necessary to point out certain background material and to discuss in general terms a few aspects of competitive bidding.

In the first place, I think it is extremely important to realize that we determined to the best of our ability that Schering Corporation occupied an outstanding position in the ethical drug field. For example, over a period of several years we had been studying this company, had become acquainted with its executives and its general reputation in the medical field. When the bidding became imminent, we employed, as I have previously told you, an outstanding firm of chemical engineers who made a complete survey on this company, including its operations, products, distribution, reputation, and management. We further had the benefit of another engineering study which was prepared by a private firm who had contemplated bidding for these shares. In our own investigation and in the two reports, which represented independent thinking, we found a uniform high opinion for the company, its products, its management, and particularly its reputation in the medical profession. Even though Schering had been operated, so to speak, by the Government for approximately eight years, we were unable to uncover any of the abuses which might have occurred in this type of operation. Therefore, as our first and perhaps our most important premise, we were and are absolutely convinced that the company is one of the finest units in the ethical drug field.

You are, of course, familiar with the market action of stocks in the ethical drug field and know that they characteristically sell on a high price-earnings ratio and gen- [fol 3281] erally afford very low yields. The reason for this, of course, is that almost without exception ethical drug companies have shown remarkable growth, and as yet there is no sign that this growth trend is diminishing! Investors are willing to pay a premium for this ability to grow; and consequently, you find high price-earnings ratios and low yields.

Drug stocks and chemical stocks have very similar characteristics, and at this point, I would like to point out the market action of certain issues which were offered to the public for the first time in fairly recent years. In 1943, Chas. Pfizer & Co. common stock was sold to the public at 23¾. Since that time, it has been split the equivalent of 9-for-1 and is now selling around 36. In 1950, G. D. Searle & Co common stock was offered to the public at 38, has since been split 2-for-1 and is now selling around 55. In 1949, Rohm & Hass common was sold to the public at 41¼, is presently selling around 116, and has sold as high as 160. Approximately a year ago, Cutter Laboratories common was sold to the public at 11½ and is presently selling around 19-20. About four months ago, Baxter Laboratories common was sold to the public at 17 and is now selling around 23-4. Pfizer, Searle, Cutter, and Baxter are all substantially in the ethical drug field. Rohm & Haas, of course, is a chemical company rather than a drug company. It is an important point to keep in mind that new issues of drug and chemical stocks have enjoyed outstanding market performance, and the public has a tremendous appetite for stocks in these fields.

It took almost three years for the Government to actually offer Schering for competitive bidding. In the meantime, premature notices of bidding kept coming out, with the result that a tremendous interest in this issue was generated among potential investors. In our own firm, we had, over a period of two or three years, been besieged with orders for this stock, even though no one knew at what price it would be offered.

As for bidding itself, it involves certain hazards and perhaps lends itself to overenthusiasm on the part of in-

vestment bankers. For example, if you are managing a competitive bidding group, your philosophy must be that you are going to win the bid. Otherwise, you would not even consider submitting a bid. Therefore, it may be true that in certain cases the desire to win a bid leads to overpricing, which may or may not be disastrous for the banker, depending on public appetite for the security being offered. I do not mean to imply that we feel in any way that Schering Corporation stock was overpriced; but we did have a strong bidding group, we wanted to win the bid and felt that our ultimate price was attractive, particularly from the long range standpoint. We also felt that the investing public would pay more for this stock than any private bidder. This belief was subsequently borne out by the fact that all three bidders who bid for public distribution outbid every individual bidder.

With the foregoing background, I will now try to give you our reasoning as to how we arrived at the public offering price of $17.50 per share. Enclosed are two compari- [fol. 3282] sons which we prepared to help us evaluate this issue. You will note that in both comparisons we used the old capitalization of Schering; that is, 440,000 shares of common. We subsequently split these shares 4-for-1 so that there are outstanding 1,760,000 shares of common. The first comparison compares Schering Corporation with five of the outstanding units in the ethical drug field. I have noted in pencil on this comparison figures for Schering Corporation based on our public offering price, which was the equivalent of $70 per share on the old shares. Since there was no dividend rate to go on, all we could look at was the price-earnings ratios and the relative book values. You will note that with the exception of the price-earnings ratio in 1951 our offering price of 70 is not out of line with the other companies in the comparison. Also, while book value is a relatively unimportant factor, you will note that Schering had the most favorable book value relationship of all the companies.

Thinking that there might be some criticism of this comparison because we were using companies which, with the exception of Searle, are substantially larger than Schering, we prepared the second comparison where we used companies that are all smaller than Schering. Here

again you will note that the ratios for Schering were not very much out of line, and in this case we were certain that Schering was by far the best company in this group.

The one disturbing point on each of these comparisons is that we offered Schering at a price-earnings ratio for 1951 which was higher than any of the other companies. The reason for this is that we became convinced that 1951 earnings for Schering were not at all representative of its true earning power as there were a number of unusual factors affecting the company in that year. In the first place, Schering commenced the production in 1951 of cortisone and experienced considerable difficulty and expense before it ironed out production problems. Secondly, there was in 1951 a price cut for hormone products which also adversely affected Schering. It was, therefore, our belief that earnings in 1949 and 1950 were more representative than those in 1951.

After the bidding papers were made available, the company announced that sales in January of 1952 increased 28%, and for the first two months of 1952 increased 30%. With this information and with the knowledge that Schering had been operating at a relatively low profit margin in its group, we prepared the third tabulation, which is enclosed. Schering's average profit margin in the past five years was around 20%, but in 1951 it slipped to 17.6%. Other companies in the ethical drug fields have profit margins which run between 30% and 40%. It is our feeling that 1951 represented an abnormally low year for Schering, and it is also our feeling that over the longer term this company's profit margin will increase substantially. Furthermore, the company's profit margin is a function of its sales increase. Thus, as sales increase, you generally find the profit margin increasing very rapidly. This third tabulation attempts to forecast Schering's earnings for 1952 and makes certain assumptions, both as to sales and to profit margins. Here again the per share figures [fol. 3283] are on the basis of the old stock, but I think you will notice that with any reasonable increase in sales net profit after taxes will easily reach the $4.00 rate. On the basis of $4.00 annual earnings, our offering price was only 17½ times earnings rather than 22.4 times, which shows on the comparison. Furthermore, if excess profits taxes are reduced or if normal and sur-taxes are reduced, Scher-

ing earnings should go considerably over the $4.00 rate with any moderate increase in sales.

Bidding groups normally have to be very secretive about what price they propose to bid for any given issue. However, in an issue of this type where there was such tremendous public interest, it became generally known that the public was willing to pay in excess of $60 per share for this stock; and this fact must, of course, be given some weight. You probably know that the other two public distribution groups both bid to offer well over $60. As a practical bidding matter, our bid was a little bit higher than necessary to win the offering, but we do not feel that it was too high. You might be interested to know that a large number of our other underwriters were prepared to bid considerably higher than our group finally did.

Your letter brought up the question of dividends as a basis for evaluation. In view of the low yields prevailing in the ethical drug field, we did not believe that the dividend was a matter of very great importance. As you know, the company has never paid any dividends, although a dividend policy will be adopted fairly shortly. We knew when we bid for the stock that any dividends that were declared would represent a fairly small proportion of the earnings, as the company has programs under way which will require the reinvestment of a large portion of its net income. This type of stock is generally bought for long term holding, where capital appreciation is sought and dividend income is a very minor consideration.

I hope that this letter, together with my enclosures, will give you some insight into a problem which was considerably more complex than I have made it. I wish you would let me know if any of my statements need clarifying, or if there is any further information I can give you on this offering.

Very truly yours, G. K. Martin.

GKM:ADW

Enclosures 3

(Here follows 1 Photolithograph, side folio 3284)

# Stock Turnover, Table XIII

1959

| Company | Stock Outstanding (Moody's) | Trading Volume N.Y.S.E. (Round lot) | Trading Volume Regional Exchanges | Trading Volume Total | Turnover Ratio N.Y.S.E. | Turnover Ratio Total | |
|---|---|---|---|---|---|---|---|
| Aluminum Co. of Amer. | 20,607,428 | 1,268,900 | 76,712 | 1,345,612 | 6.16 | 6.53 | (16) |
| American Tel + Tel Co | 64,648,178 | 1,940,700 | 824,000 | 2,764,700 | 3.00 | 4.28 | (12) |
| Amer. Tobacco Co. | 6,512,522 | 655,200 | 154,482 | 809,682 | 10.06 | 12.43 | (34) |
| Atchison, Topeka + Santa Fe Ry Co. | 24,270,600 | 2,579,100 | 382,562 | 2,961,662 | 10.63 | 12.20 | (33) |
| Bethlehem Steel Corp. | 44,649,188 | 9,127,045 | 1,169,024 | 10,296,069 | 20.44 | 23.06 | (39) |
| Chesapeake + Ohio Ry Co. | 8,019,000 | 713,800 | 124,004 | 837,804 | 8.90 | 10.45 | (31) |
| Chrysler Corp. | 8,725,764 | 4,839,600 | 564,210 | 5,403,810 | 55.46 | 61.93 | (40) |
| Cities Service Co. | 10,312,553 | 1,214,100 | 100,959 | 1,315,059 | 11.77 | 12.75 | (35) |
| Consolidated Edison Co. (N.Y.) | 13,716,688 | 818,500 | 88,476 | 906,976 | 5.97 | 6.61 | (17) |
| E. DuPont de Nemours + Co. | 45,604,345 | 816,400 | 179,215 | 995,615 | 1.79 | 2.18 | (2) |
| Eastman Kodak Co. | 19,191,123 | 605,800 | 92,943 | 698,743 | 3.16 | 3.64 | (9) |
| Firestone Tire + Rubber Co. | 8,406,031 | 306,200 | 708 | 306,908 | 3.64 | 3.65 | (8) |
| Ford Motor Co. | 12,003,481 | 2,141,850 | 614,710 | 2,756,560 | 17.84 | 22.96 | (38) |
| General Electric Co. | 87,060,034 | 2,889,000 | 541,302 | 3,430,302 | 3.32 | 3.94 | (10) |
| General Motors Corp. | 271,232,830 | 6,690,419 | 2,288,441 | 8,978,860 | 2.41 | 3.23 | (3) |
| Goodyear Tire + Rubber Co. | 10,590,116 | 650,900 | 58,179 | 709,079 | 6.15 | 6.70 | (19) |
| Gulf Oil Corp. | 32,130,789 | 2,210,535 | 208,215 | 2,418,750 | 7.10 | 7.77 | (22) |
| Inland Steel Co. | 5,692,763 | 322,700 | 82,461 | 405,161 | 5.67 | 7.12 | (20) |
| I B M Corp. | 11,552,460 | 1,213,220 | 44,054 | 1,257,274 | 10.50 | 10.88 | (32) |
| International Paper Co. | 12,543,371 | 903,166 | 108,632 | 1,011,798 | 7.20 | 8.07 | (24) |
| Kennecott Copper Corp. | 10,821,653 | 847,000 | 117,320 | 964,320 | 7.83 | 8.91 | (29) |
| National Lead Co. | 11,648,602 | 756,500 | 76,038 | 832,538 | 6.49 | 7.15 | (21) |
| Pacific Gas + Elec. Co. | 17,075,524 | 566,700 | 311,160 | 877,860 | 3.32 | 5.14 | (15) |
| Phillips Petroleum Co. | 34,350,769 | 2,912,600 | 346,573 | 3,259,173 | 8.48 | 9.49 | (26) |
| Pittsburgh Plate Glass Co. | 9,894,319 | 390,600 | 25,217 | 415,817 | 3.95 | 4.20 | (11) |
| P. G. [illegible] | [illegible] | [illegible] | 92,477 | 647,977 | 2.80 | 3.26 | (4) |

[fol. 3284]

Charge to the account of MERRILL LYNCH, PIERCE, FENNER & BEANE - 70 PINE ST., UNDERWRITING DIV

CLASS OF SERVICE DESIRED

| DOMESTIC | | CABLE | |
|---|---|---|---|
| TELEGRAM | | ORDINARY | ✓ |
| DAY LETTER | | URGENT RATE | |
| SERIAL | | DEFERRED | |
| NIGHT LETTER | | NIGHT LETTER | |

If none, check class of service desired; otherwise the message will be transmitted as a telegram at ordinary rate.

# WESTERN UNION

1206

JOSEPH L. EGAN
PRESIDENT

| CHECK |
|---|
| ACCOUNTING INFORMATION |
| TIME FILED |

Send the following telegram, subject to the terms on back hereof, which are hereby agreed to

MR. SAMUEL L. FULLER
c/o AMERICAN EXPRESS
NAPLES, ITALY

DEAL BID SUCCESS. 6% UNSUBSCRIBED. ALL PLACED. FINE PIECE OF BUSINESS.

JAN 27

GEORGE LEHESS

(CHOE SINCLAIR OIL SYN)

82

[fol. 3285] March 2, 1956.

Mr. Henry Ford, II,
President,
Ford Motor Company,
3000 Schaefer Road,
Dearborn, Michigan.

Dear Henry:

I thought that possibly you and your associates might be interested in getting the details of the distribution our firm effected in the common stock offering. The attached sheet shows in the left-hand column the number of shares sold by each of our offices. The right-hand column, namely column B, shows the number of individual sales in each of these offices. It includes not only our sales in the continental United States, but our sales in San Juan, Puerto Rico; Toronto, Canada; Geneva, Switzerland, and Mexico City.

We distributed at the original issue price 343,251 shares to 28,902 people, or an average of about 11.7 shares per customer. We could have easily doubled our sales of these shares had they been available to us at the time.

It might interest you to know that in addition to these sales at the original issue price, our Trading Department during the period from January 18 to February 29 this year traded about 410,000 shares of Ford Motor Company stock. Of this amount, 241,000 shares were bought by our clients for permanent investment. As of the close of business February 29, approximately 584,000 shares were held by our clients either in their own names or held by us for their accounts.

I think this is the kind of distribution that you and your associates wanted to have and we are glad that we were able to effect it.

All things considered, I think the whole transaction has worked out extremely well. In spite of the fact that the shares have recently been slightly below the original issue price, we have had no complaints from any of our customers. By and large, I am sure that most of them intend to retain these shares as an investment.

Best wishes. Sincerely yours, ——, ——.

GJL:vs

[fol. 3286] 1/5/56.

Mr. N. P. Hargrave, Chicago
G. J. Lemess, New York

Dear Homer:

On the enclosed draft are some pearls of wisdom which have been taken from a number of letters we have written on this same subject. You can perhaps use this as you see fit with your friend in the S. C. Johnson & Sons Company of Racine.

The records show that in 1945 Morgan Stanley & Co. placed privately $848,000 of $100 Par 4¼% Preferred. The records do not show whether this Preferred was owned by the family or actually was new issue Preferred offered by the Company itself. In any event, 1945 is quite a long time ago.

Best wishes. Sincerely yours, ——, ——.

GJL:vs
Encl.

---

[fol. 3287] Dear Mr. X:

Enclosed is a copy of the final Ford Motor Company prospectus which I thought you would be interested in having. One of my New York partners was retained by the Ford Foundation approximately two years ago to see if it would be possible to work out a financial re-organization of the Ford Motor Company for the purpose of keeping working control in the hands of the Ford family and at the same time create a security which would have a national market and be listable on the New York Stock Exchange, so that the Ford Foundation could begin to liquidate some of its holdings of Ford Motor Company stock. The Trustees of the Foundation were naturally concerned about the lack of diversification in the Foundation's portfolio since over 90% of their holdings were in one security, namely, the stock of the Ford Motor Company.

For a great many years, as you may be aware, the Ford family has been very reluctant to become a publicly-held company. They have steadfastly held that this huge enterprise which they control had served them faithfully throug

several generations and there was no need of creating a public market for their shares. After long deliberations, however, they finally came to the conclusion that it was to the best interests of their company, their fellow managers and themselves that a public market be established.

There are, of course, certain advantages to keeping a company privately-owned. The management of a privately-owned company has complete freedom of corporate action; in connection with the paying of dividends it has no responsibility to the investing public. Some managements feel that a great many of their operating secrets will be made available to their competitors if they have public shareholders. However, this last point most companies find is not a very important point.

In today's economy when a company gets to a certain critical size it seems to become just a matter of time before the creation of a public market for its equity becomes a fact. As you know, a great many companies are considered publicly-owned even though considerably less than half of their equity shares are held by the general public. Broad public ownership establishes a going market for the securities of a going company which is extremely valuable in establishing values for estate tax purposes. Time and time again values are established with the Federal Bureau for estate tax purposes but as the years go on new values have to be set and the Bureau seems to have a tendency to make the whole process a little more difficult each time.

[fol. 3288] There are a number of other advantages to public ownership, at least a part. With a quoted market for its securities a company can generally more readily raise additional funds than one that does not enjoy such a public appraisal. This is true even though the securities sold to raise additional funds are different than those in the hands of the public.

If a company plans on acquiring other companies over the years, the fact that if has a broad public market for its shares is usually a tremendous help. Another important point in favor of public ownership is that, generally speaking, through stock option plans and otherwise, the continuity of able management is more apt to be assured. Furthermore, companies that have public markets

are apt to attract able young men more readily than other ones.

There is a further intangible help in having a public market and that is quite frequently the sale of the company's products is facilitated. I know that the Ford management feels that the fact that their stock is going to be listed on the New York Stock Exchange will be very helpful to have in selling Ford Motor Company products.

The above are some of the perhaps more obvious reasons why privately-owned companies are more and more becoming at least to a limited degree to have public partners. The whole trend of business economy during the past twenty-five years has been in this general direction once a company gets to a certain size.

Homer: You can end this in any way you want.

---

[fol. 3289] April 10, 1956

Mr. Thomas B. McCabe
President
Scott Paper Company
Chester, Pennsylvania

Dear Mr. McCabe:

Now that the Scott Paper Company Convertible Debenture offering has been so successfully completed, I want to take this opportunity on behalf of our firm to thank you for the opportunity of being of service to the Scott Paper Company. Most particularly, I want to tell you how much we appreciate the improved position which you arranged for us in this offering.

We are convinced that Scott Paper Company has an expanding and successful future before it. The eagerness with which the investing public and your stockholders purchased the Convertible 3% Debentures is a fine tribute to the high regard investors generally have for the credit of the Scott Paper Company.

If there is any way our organization can be of service to you, whether an underwriting is involved or not, I do hope you will feel free to call upon us.

With very best wishes, Sincerely yours, Winthrop H. Smith.

WHS:vs

[fol. 3290]

August 1, 1956

Mr. H. F. Vickers,
President,
Sperry Rand Corporation,
30 Rockefeller Plaza,
New York 20, N. Y.

Dear Harry:

Now that the public offering of the Sperry Rand shares has been so sucessfully completed, I want to thank you for giving our firm the opportunity of playing such an important part in the transaction.

Looking back to the day we set the subscription price at $20.50 per share, we probably could have set it at $21 almost as easily. However, that was several days before Mr. Eisenhower confirmed the fact that he would be a candidate. Certainly if he had decided not to run, I am sure we would have been in a very different kind of stock market than we have enjoyed during the past three weeks. In any event, your stockholders received a valuable right, which I am sure they all fully appreciate.

Again I want to thank you on behalf of our firm for the consideration you have given us. I hope in the early fall we can get together for dinner one evening.

Best wishes, Sincerely yours,

GJL:vs

[fol. 3291]

DOMESTIC SERVICE

Check the class of service desired; otherwise this message will be sent as a full rate telegram

| | |
|---|---|
| FULL RATE TELEGRAM | |
| DAY LETTER | |
| NIGHT LETTER | |

# WESTERN UNION

1206 10-51

W. P. MARSHALL, PRESIDENT

INTERNATIONAL SERVICE

Check the class of service desired; otherwise the message will be sent at the full rate

| | |
|---|---|
| FULL RATE | |
| LETTER TELEGRAM | X |
| SHIP RADIOGRAM | |

| NO. WDS. | CL. OF SVC. | PD. OR COLL. | CASH NO. | CHARGE TO THE ACCOUNT OF | TIME FILED |
|---|---|---|---|---|---|
| | | | | MERRILL LYNCH, BERCE, PENNER & BEANE 70 PINE ST., NYC (CHGE SPERRY RAND STN) | |

Send the following message, subject to the terms on back hereof, which are hereby agreed to

MR. WINTHROP H. SMITH
LIMA COUNTRY CLUB
LIMA, PERU

SPERRY ISSUE HUGE SUCCESS. OVERSUBSCRIBED. OUR SALES $16,000,000.

BONDS A PREMIUM. REGARDS.

GEORGE

SEP 1[illegible]

[fol. 3292]

-V-

DOUGLAS DEBENTURES SOLD

N Y -DJ- THE OFFERING OF 60 MILLION DLS DOUGLAS AIRCRAFT CO INC 5 PC DEBENTURES HAS BEEN OVERSUBSCRIBED AND THE BOOKS CLOSED UNDERWRITERS LED BY MERRILL LYNCH PIERCE FENNER & SMITH AND KUHN OEB & CO ANNOUNCED

-V-

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| National Lead Co. | 11,010,0[illegible] | | | | | | |
| Pacific Gas + Elec. Co | 17,075,524 | 566,700 | 311,160 | 877,860 | 3.32 | 5.14 | (15) |
| Phillips Petroleum Co | 34,350,769 | 2,912,600 | 346573 | 3,259,173 | 8.48 | 9.49 | (26) |
| Pittsburgh Plate glass Co | 9,894,319 | 390,600 | 25,217 | 415,817 | 3.95 | 4.20 | (11) |
| Procter & Gamble Co | 19,868,664 | 555,900 | 92,077 | 647,977 | 2.80 | 3.26 | (4) |
| Republic Steel Corp | 15,595,101 | 1,865,400 | 329849 | 2,195,249 | 11.96 | 14.08 | (36) |
| R.J. Reynolds Tobacco Co | 9,662508 | 793,900 [1] | 147,728 | 941,628 | 8.22 | 9.75 | (29) |
| Sears, Roebuck & Co | 75,061,754 | 2,919,365 | 634053 | 3,553,418 | 3.89 | 4.73 | (14) |
| Shell Oil Co | 30,286,384 | 505,200 | 34,671 | 539,871 | 1.67 | 1.78 | (1) |
| Sinclair Oil Corp | 15,312,653 | 1,299,900 | 195,666 | 1,495,566 | 8.49 | 9.77 | (28) |
| Socony Mobil Oil Co. Inc | 48,310,195 | 2,762,500 | 434,643 | 3,197,143 | 5.72 | 6.62 | (18) |
| Standard oil Co of Calif | 63,224,386 | 2,261,500 | 658904 | 2,920,404 | 3.58 | 4.62 | (13) |
| Standard oil Co (Ind) | 35,769,010 | 2,457,000 | 427,157 | 2,884,157 | 6.87 | 8.06 | (23) |
| Standard Oil Co (N.J) | 203,488,202 | 5,712,340 | 1,068,025 | 6,780,365 | 2.81 | 3.33 | (5) |
| Texas Co | 55,937,434 | 1,695,700 | 212,573 | 1,908,273 | 3.03 | 3.41 | (6) |
| Union Carbide Corp | 30,067,123 | 928,850 | 184942 | 1,113,792 | 3.09 | 3.70 | (9) |
| Union Pacific R.R. Co. | 22,229,100 | 1,924,500 | 214351 | 2,138,851 | 8.66 | 9.62 | (27) |
| United States Steel Co | 53,753,622 | 4,822,100 | 688,056 | 5,510,156 | 8.97 | 10.25 | (30) |
| Westinghouse Electric Corp | 16,943,337 | 2,610,700 | 380,856 | 2,991,556 | 15.41 | 17.66 | (35) |

[1] Class "B" only. (1760 common not included)

[fol. 3293] April 22, 1958

Mr. George Leness,
Chairman of the Board
Merrill, Lynch Pierce Fenner & Smith,
70 Pine Street,
New York 5, N. Y.

Dear George:

I want to tell you that I am most gratified about the way our debenture issue went over. I am sure that our company made a good, reasonable deal. I have not received any letters of criticism from stock holders, nor was there any voiced at our annual meeting.

I want you to know that my previous feelings toward you and your fine firm have been again confirmed. You and your associates are tops in your business. It is always a pleasure to do business with you and always inspiring to visit with you. Please try some time soon to visit us here on a pleasure trip. I would be so happy to have an opportunity of having some fun in your company.

With warm regards.

Sincerely, Donald W. Douglas.

DWD:mt
cc: to
Lyman R. McFie

---

[fol. 3294] Kuhn, Loeb & Co.

Thirty Wall Street
New York 5

May 7, 1958

Dear Norman:

Thank you very much for your letter of March 7th with enclosures in connection with the $60,000,000 Douglas Aircraft Company, Inc. 5% Sinking Fund Debenture financing.

It was a pleasure to have been able to work with you on

this transaction and to have seen it brought to a successful conclusion.

Cordially, J. Emerson Thors.

Norman P. Smith, Esq., Messrs. Merrill Lynch, Pierce, Fenner & Smith, 70 Pine Street, New York 5, N. Y.

JET:JMR

[fol. 3295] July 28, 1958

Mr. John A. Dundas,
Executive Vice President,
Douglas Aircraft Company,
3000 Ocean Park Boulevard,
Santa Monica, California,

Dear John:

Harriman Ripley "closed the books" on the Debentures 5's today so the deal is as good as completed. I am enclosing a list of the principal purchasers which I thought you might like to have. These few institutions accounted for 40% of the total issue.

At about the time of the Boeing offering the discount price for the Boeings did generate a bit of switching out of your bonds into Boeings and took a bit of the edge off your market. However, the fact that your bonds have been at the par and a half level the last few days is, I think, quite a tribute to your company.

Hope to see you soon.

Sincerely yours, W. A. Forrester, Jr.

WAF:ck
Enc.

[fol. 3296]

Boeing 5%—40,000,000 @ 98½

Principal Purchasers:

| | |
|---|---|
| Metropolitan Life | 5,000,000 |
| Aetna Life | 5,000,000 |
| New England Mutual | 1,000,000 |
| East River Savings Bank | 1,000,000 |
| State Mutual (Worcester) | 1,000,000 |
| Home Life | 1,000,000 |
| Conn. General | 500,000 |
| Teachers' | 500,000 |
| Am. National (Galveston) | 500,000 |
| Occidental Life | 500,000 |
| | 16,000,000 |

RECEIVED

JAN 5 - 1955

cc: C. A. Rittenhouse, 3d
Director, Legal Department

INFORMAL MEMORANDUM

January 5, 1955

TO: MEMBERS OF FINANCE COMMITTEE

FROM: TREASURER

## GENERAL MOTORS STOCK

On January 3, 1955 the Board of Directors of General Motors Corporation approved additional financing in the area of $325MM through issuance of additional common stock. Each common stockholder will receive a right to buy one-twentieth of a share of General Motors common stock for each share held. On this basis, a subscription price in the range of $75 - $80 a share is indicated; however, the actual subscription price will not be announced until about February 7. It is expected that the rights will be issued about February 8, 1955 and will expire about March 7, 1955. A group headed by Morgan Stanley & Co. will underwrite the issue. This memorandum has been prepared to assist the Committee members in considering this matter.

The Company can exercise its rights and purchase up to 1MM additional shares of General Motors common stock at an aggregate cost of, say, $80MM, or it can sell all or part of its rights. The following tabulation is illustrative of our equity position:

| | Present Holdings | | Rights Exercised | | Rights Sold | |
|---|---|---|---|---|---|---|
| | Shares | % | Shares | % | Shares | % |
| Du Pont | 20 000M | 22.6 | 21 000M | 22.6 | 20 000M | 21.5 |
| Others | 68 514 | 77.4 | 71 940 | 77.4 | 72 940 | 78.5 |
| Total | 88 514M | 100.0 | 92 940M | 100.0 | 92 940M | 100.0 |

The 20MM shares now held have a Company cost of $57.6MM* ($2.88 a share) but are carried on the books at $609MM ($30.45 a share) as a result of annual write-ups to General Motors' approximate book

*For Federal income tax purposes, cost basis of present holdings is [illegible] a share.

value. Whether or not the du Pont Company exercises its rights, the book carrying value of the present 20MM shares will be increased (through next year's adjustment) by some $47MM, assuming a subscription price of $80 a share, because the subscription price to be received by General Motors is more than General Motors' present book value and hence will raise the book value of all shares.

Ample cash (temporarily invested in marketable securities) is available to allow exercise of the Company's 20MM rights (assuming $80MM expenditure) as shown by the following order of magnitude estimates which are based on the #4-1954 Forecast of Sales and Earnings and the #1-1955 Construction Forecast (now under preparation) of expenditures and authorizations:

| | "Desirable Cash" | "Available Cash" | Estimated Difference |
|---|---|---|---|
| 12/31/54 | $181MM | $323MM | $142MM |
| 3/31/55 | 188 | 336 | 148 |
| 6/30/55 | 200 | 347 | 147 |
| 9/30/55 | 196 | 357 | 161 |
| 12/31/55 | 193 | 367 | 174 |

The #4-1954 cash position forecast showed an estimated difference at 12/31/55 of $154MM versus the $174MM shown above; it also showed an excess of "Available" over "Desirable" cash of $202MM at the end of 1956.

The yield (after taxes on dividends) on an additional investment in General Motors common stock is shown below under various assumptions:

| | Assumed Annual Dividend a Share | | | | | |
|---|---|---|---|---|---|---|
| | $3 | $4 | $5 | $6 | $7 | $8 |
| 1MM new shares @ $80 cost | | | | | | |
| Dividend Yield | 3.5% | 4.6% | 5.8% | 6.9% | 8.1% | 9.2% |
| Earnings Yield - assuming dividends equal 60%** distribution | 6.2 | 8.3 | 10.4 | 12.5 | 14.6 | 16.7 |

*General Motors common dividend for 1954 was $5 a share.

**General Motors common dividends have equalled 60.9% of earnings on common stock since 1925

$95 when the rights are issued and the subscription price per share were to be $80, the market value of each right, according to a formula customarily used, would be about 71¢. (These assumed prices are the basis for all pertinent figure data cited hereinafter.) The aggregate value of our 20MM rights would be about $14.2MM. Receipt of the rights does not result in taxable income to the Company.

Under the 1954 Internal Revenue Code, we would not be required to apportion any cost basis to the rights, since the value of a right will be less than 15% of the value of a share of stock. However, advantage could accrue from assigning some cost to the rights. The tax cost basis of our rights would be about 2¢ each. This would be determined as follows: Apportion the tax cost basis (average $2.82 per share) of the old shares to the rights in the ratio that the market value of the rights bears to the sum of the market values of the old shares and the rights (e.g., 71¢/$95.71 x $2.82 = 2¢).

If the rights are exercised, the new shares would have a tax cost basis of $80.40. This would be the basis for determination of capital gain or loss for these particular shares, should they be subsequently sold. The new shares would have to be held more than 6 months before gain or loss from their sale could be treated as long-term for tax purposes. Public sale by the Company of more than $100MM worth of General Motors stock in any one year would require the filing with SEC of a registration statement prepared by GM at our expense.

If the rights are sold, a taxable long-term gain would arise (long-term because the rights are assigned the same holding period as the stock on which they are issued). The gain would be some 69¢ per right. The following tabulation shows the results of sale of our rights:

| | | |
|---|---|---|
| Estimated sales price (20MM x 71¢) | $14.2MM | $14.2MM |
| Tax cost basis of 20MM rights @ 2¢ | 0.4 | |
| Taxable gain | $13.8MM | |
| Tax on gain at 25% | | 3.5 |
| Net proceeds of sale | | $10.7MM |

The General Motors underwriters would like to know, but are not pressing to know, our intentions with respect to our 20MM rights by January 17, 1955. Knowledge of du Pont's intentions presumably

would have some effect on both the subscription price set by General Motors and the cost of the underwriting operation. It is substantially the difference between a common stock flotation of 4,426M shares and one of 3,426M shares. The risk and expense attendant upon the smaller public flotation should reduce the underwriting fees and expenses -- a benefit to General Motors Corporation. Knowledge that du Pont Company proposes to exercise its rights presumably would help bolster the market price of General Motors stock, in which event General Motors might be able to command a higher subscription price -- also an advantage to General Motors Corporation. On the other hand, any increase in subscription price would require the investment of more dollars by the du Pont Company; this would operate not only to increase the outlay of cash but to diminish somewhat the yield on the investment. Moreover, an announcement of our intentions to the underwriters on January 17 would inevitably assume something of the character of a commitment made in advance of knowledge as to the specific terms of the new stock issue, i.e. subscription price and value of rights. Since Morgan Stanley & Co. are confident that the issue can be successfully handled regardless of whether du Pont Company exercises or not, it seems to me that there is more disadvantage than advantage to du Pont in making any disclosure of its intentions prior to the announcement on February 7 of the subscription price.

Mr. John Young of Morgan Stanley & Co. has informed me that if the Company should decide to sell its rights, Morgan Stanley would be prepared to negotiate for the purchase of the entire block. It appears probable that trading in the rights will commence on February 8. Under the underwriting procedure, the underwriters are prohibited by SEC from dealing in the rights during the first day of trading. Mr. Young indicated that they would be ready to make an offer for the 20MM rights on February 9 at the then bid price or at a slight discount therefrom; we did not discuss his concept of a "slight discount". If we were going to sell the rights, it would seem better to negotiate for the entire block rather than to feed them out on the market.

[fol. 3301]

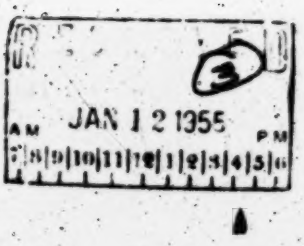
It is the view of Mr. Rittenhouse that the importance of the decision to exercise or sell the rights is such as to make appropriate and desirable action by the Board of Directors. It appears to be to the best interests of the Company to have decision reached and announced as promptly as possible after February 7. Mr. Young states that after trading commences on February 8 uncertainty among the investing public as to whether du Pont's 20MM rights will come upon the market would create a very unsettling effect on the market and would probably operate to depress the price of the rights. If it is intended that the rights be sold, we believe that advantage rests in being able to negotiate their sale promptly upon their issue; if the rights are to be exercised, we see no disadvantage to the Company in an announcement to that effect promptly after the terms of the issue become known on February 7. This situation points to the desirability of a special Finance Committee meeting and a special Board of Directors meeting on, say, February 9, 1955.

R. R. PIPPIN



58

FGH




F 4 G J-

cc: T. E. Clough, Legal Department

1/13/55 - copy & P.S. dtd. 3rd

January 12, 1955

TO: MEMBERS OF FINANCE COMMITTEE

FROM: TREASURER

GENERAL MOTORS STOCK
(Supplement to memo of 1-5-55)

In considering the Company's course of action relative to exercise of the rights under the proposed General Motors' capital financing, question has arisen as to SEC requirements if the Company should acquire the additional 1MM shares and then find it desirable at a subsequent date to sell all or part of such shares.

In such an eventuality, a registration statement would be required to be filed with SEC prior to a public offering of any substantial amount of GM stock (more than $100M aggregate amount in any twelve month period). A public offering in this context would be construed as any sale involving distribution through (1) an underwriter, (2) regular trading on a securities exchange, (3) transactions after the close of trading on a securities exchange, and (4) any other procedure involving a sale or offer to sell to the public. The terms 'public offering" and "distribution" have not been defined by the Act or the Commission except in the negative manner referred to hereinafter with respect to Rule 154. There have been opinions of SEC counsel which indicate that the term "distribution" is synonymous with a "public offering", and that each case must be considered on its facts before a determination as to applicability of the terms can be made.

Exemption from filing a registration statement is provided by Section 4(2) of the Act with respect to "brokers' transactions". Under this provision limited sales of stock, not involving a "distribution", may be effected through regular trading channels. The application of this exemption has been the cause of much controversy,

particularly in the case of sales for "controlling persons". Recently, in an effort to settle the controversy, the SEC adopted Rule 154 to define the meaning of "brokers' transactions"..."to include transactions by a broker acting as agent for the account of any person controlling...the issuer...where -- (1) the broker performs no more than the usual and customary broker's function, ... (4) the broker is not aware of circumstances indicating that his principal is an underwriter in respect of the securities or that the transactions are part of a distribution of securities on behalf of his principal." (Underlining supplied.) The Rule also provides that the term "distribution", for the purpose of the Rule, "shall not be deemed to include a sale or series of sales of securities which, together with all other sales of securities of the same class by or on behalf of the same person within the preceding period of six months, will not exceed...the lesser of approximately (A) one percent of the shares or units of such security outstanding at the time of receipt by the broker of the order to execute such transactions or (B) the largest aggregate reported volume of trading on securities exchanges during any one week within the four calendar weeks preceding the receipt of such order." One percent of General Motors shares outstanding after exercise of all rights will be approximately 930M shares, and the average weekly trading in General Motors common stock during 1954 was approximately 75M shares. The lesser of these figures gives some indication of the number of shares that might be sold through brokers, pursuant to this Rule, during a six month period.

With respect to Rule 154, it is important to note that it provides exemption only for the broker and does not provide any exemption for issuers, underwriters, or dealers. If du Pont could be held to have exercised its rights with a view to "distribution" of

---

*The SEC considers du Pont to be a "controlling person" with respect to General Motors.

[fol. 3304]

the shares, it could be considered an "underwriter". Rule 154 would provide no exemption for du Pont under such circumstances; its only effect would be to protect the persons selling for du Pont in the event they had no knowledge that du Pont was making a "distribution". Du Pont's position with respect to exemption from registration is not affected by Rule 154, as noted above

Assurance that exemption from registration under the foregoing provisions would be available would require making prior application to the SEC staff for a ruling that a proposed sale or series of sales in specified aggregate amounts would not be regarded as a "distribution". Such application should make full disclosure of all pertinent facts surrounding acquisition of the shares proposed to be sold and reasons for the proposed sale. Each application would be considered by SEC on its merits; however, a series of such applications in succeeding six month periods might create the impression that du Pont was attempting to avoid registration by this method, and it would seem fair to assume that such repetitive applications would encounter diminishing chances of being approved.

* * * * *

No registration statement would be required for a private sale by du Pont of any number of shares of General Motors common stock unless the purchasers of such stock had the intent of subsequent



54

[fol. 3305]

resale to the public. There is no established definition of "private sale"; legal precedent emphasizes the importance of the circumstances surrounding each instance, such as the number and character of offerees and the number of shares involved. Generally, the number of offerees should not exceed twenty-five and they should be professional investors or other well-informed persons for whom the protection afforded by registration would not normally be required. If, for example, du Pont Company should offer or sell (either directly or through an intermediary) up to 1MM or more shares of General Motors common stock to one or a small group of institutional investors (not for public resale), the transaction should be classified as a private sale; as such, it would not require filing a registration statement with SEC. However, it would be appropriate to obtain prior concurrence of the SEC staff that they regard the transaction as a "private sale".

R. R. PIPPIN